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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-seventh 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 1999. Decisions given in 1999 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 1999.

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

[No legislative texts to be reported for 1999]

Chapter II

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

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

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

As at 31 December 1999, there were 141 States parties to the Convention.[2]

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2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Agreement between the United Nations and Morocco concerning the status of the United Nations Mission for the Referendum in Western Sahara. Signed at New York on 11 February 1999[3]

I. DEFINITIONS

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

(*a*) "MINURSO" means the United Nations Mission for the Referendum in Western Sahara, established in accordance with Security Council resolution 690 (1991) of 20 April 1991 and the mandate of which has been extended by various Security Council resolutions, the most recent being resolution 1224 (1999) of 28 January 1999. MINURSO was strengthened pursuant to Security Council resolution 1148 (1998) of 26 January 1998. It comprises:

(i) The "Special Representative" appointed by the Secretary-General of the United Nations. Except in paragraph 29 below, any reference in the present Agreement to the Special Representative shall also include any member of MINURSO to whom the Special Representative may have delegated his authority;

(ii) The "civilian component" made up of United Nations officials and of personnel provided by participating States at the request of the Secretary-General;

(iii) The "military component" made up of military and civilian personnel provided by participating States at the request of the Secretary-General;

(iv) The "security component" made up of civilian police officers made available to MINURSO by participating States at the request of the Secretary-General;

(*b*) "Mission area" means, for the purposes of the present Agreement, the Territory of Western Sahara and designated sites in Morocco necessary for the conduct of MINURSO activities;

(*c*) "Settlement Plan" comprises the proposals contained in the reports of the Secretary-General dated 18 June 1990 and 19 April 1991 concerning the question of Western Sahara submitted to the Security Council.[4] The above-mentioned reports were adopted by the Security Council under its resolutions 658 (1990) of 27 June 1990 and 690 (1991) of 29 April 1991;

(*d*) "Member of MINURSO" means any member of the civilian or military component or the security component;

(*e*) "Participating State" means a State contributing personnel, services, equipment, provisions, supplies, stores and other goods to the civilian or military component or the security component of MINURSO;

(*f*) "The Government" means the Government of Morocco;

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

(*h*) "Contractors" means individuals or legal entities and their employees and subcontractors, other than members of MINURSO, whom the United Nations hires to provide services and/or to supply equipment, provisions, supplies, stores and other goods to support MINURSO activities. Such contractors shall not be considered third-party beneficiaries within the meaning of the present Agreement;

(*i*) "Vehicles" means civilian and military vehicles used by the United Nations and operated by members of MINURSO and by contractors hired to support MINURSO activities;

(*j*) "Vessels" means civilian and military vessels used by the United Nations and operated by members of MINURSO and by contractors hired to support MINURSO activities;

(*k*) "Aircraft" means civil and military aircraft used by the United Nations and operated by members of MINURSO and by contractors hired to support MINURSO activities.

II. APPLICATION OF THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to MINURSO or to any member or contractor thereof apply in the mission area.

III. APPLICATION OF THE CONVENTION

3. MINURSO, its property, funds and assets, and its members, including the Special Representative, shall enjoy the privileges and immunities specified in

the present Agreement as well as those provided for in the Convention, to which Morocco is a party.

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

IV. STATUS OF MINURSO

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

6. The Government undertakes to respect the exclusively international nature of MINURSO.

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

(*a*) The United Nations shall ensure that MINURSO conducts its mission in a manner fully consistent with the principles and rules of international conventions on the conduct of military personnel. Such international conventions include the four (Red Cross) Geneva Conventions of 12 August 1949 and the Protocols Additional thereto of 8 June 1977 and the UNESCO International Convention for the Protection of Cultural Property in the Event of Armed Conflict;

(*b*) The Government undertakes to treat MINURSO military personnel at all times in a manner fully consistent with the principles and rules of international conventions applicable to the treatment of military personnel. Such international conventions include the four (Red Cross) Geneva Conventions of 12 August 1949 and the universally recognized principles and rules of international humanitarian law.

8. MINURSO and the Government shall ensure that their respective military personnel are fully cognizant of the principles and rules of the international instruments referred to in paragraph 7 above.

United Nations flag and vehicle markings

9. The Government recognizes the right of MINURSO to display within the mission area the United Nations flag on its camps or other premises, vehicles, vessels and otherwise as decided by the Special Representative. Aside from the United Nations flag, other flags or pennants may be displayed only in exceptional cases and subject to the Government's consent.

10. MINURSO vehicles, vessels and aircraft shall carry a distinctive United Nations identification, which shall be notified to the Government.

Communications

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

12. Subject to the provisions of paragraph 11:

(*a*) MINURSO shall have the right to install, in consultation with the Government, and to operate United Nations radio stations to disseminate information about the Settlement Plan. MINURSO shall also have authority to install radio sending and receiving stations as well as satellite systems to connect appropriate points within the mission area with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. United Nations radio stations and telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the frequencies on which any such stations may be operated shall be decided upon in cooperation with the Government and shall be communicated by the United Nations to the International Frequency Regulation Board;

(*b*) MINURSO shall enjoy 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 its premises, including the laying of cables and landlines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in cooperation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be charged at the most favourable rate;

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

Travel and transport

13. MINURSO and its members shall enjoy, together with its contractors, vehicles, vessels, aircraft and equipment, freedom of movement throughout the mission area. That freedom shall, with respect to large movements of personnel, equipment, vehicles or aircraft through airports or on railways or roads used for general traffic within the mission area, be coordinated with the Government. The Government undertakes to supply MINURSO, where necessary, with maps and other information, including locations of minefields and other dangers and impediments, which may be useful in facilitating its movements within the context of the mission stemming from the Settlement Plan. Where necessary, armed escorts shall be provided to protect MINURSO personnel in the performance of their duties.

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

15. MINURSO and its members, together with its contractors, shall be exempt, in all their travel and transport, from dues, tolls or charges, including wharfage charges. However, MINURSO will not claim exemption from charges which are in fact charges for services rendered.

Privileges and immunities of MINURSO

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

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

(*b*) To establish, maintain and operate commissaries in its camps and posts for the benefit of its members, but not of locally recruited personnel or of contractors. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. The Special Representative shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of MINURSO, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

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

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

17. To the end that the importation, clearances, transfer or exportation referred to in paragraph 16 may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed upon between MINURSO and the Government.

V. FACILITIES FOR MINURSO AND ITS CONTRACTORS

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

18. The Government shall, subject to the resources available, provide, without cost to MINURSO and in agreement with the Special Representative, such sites and other premises as may be necessary for the conduct of the operational and administrative activities of MINURSO and for the accommodation of its members. Without prejudice to the fact that all such premises remain Moroccan territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. When United Nations military personnel are co-located with Moroccan military personnel, a permanent, direct and immediate access by MINURSO to those premises shall be guaranteed.

19. The Government undertakes to assist MINURSO as far as possible in obtaining and making available, where applicable, water, electricity and other facilities at the most favourable rate and, in the case of interruption or threatened interruption

of service, to give as far as is within its powers the same priority to the needs of MINURSO as to essential national services. MINURSO shall pay the charges due for water, electricity and other facilities on terms to be agreed with the competent Moroccan authority. MINURSO shall be responsible for the maintenance and upkeep of facilities so provided.

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

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

Provisions, supplies and services, and sanitary arrangements

22. The Government agrees to grant all the authorizations and licences and all the permits necessary for the importation of equipment, provisions, supplies, stores and other goods to support MINURSO, including their importation free of duties, charges or taxes, including contractors' value-added tax.

23. The Government undertakes to assist MINURSO as far as possible in obtaining equipment, provisions, supplies, stores and other goods and services from local sources required for its subsistence and operations. With regard to equipment, provisions, supplies, stores and other goods purchased officially on the local market for the exclusive use of MINURSO, the Government shall take the necessary administrative steps to reimburse or refund the consumption duties or taxes included in the price. On the basis of observations made and information provided by the Government in that respect, MINURSO shall avoid any adverse effect on the local economy. The Government shall exempt MINURSO and its contractors from general sales taxes in respect of all official local purchases.

24. To enable contractors to provide proper support services to MINURSO, the Government agrees to grant contractors facilities enabling them to enter and leave the mission area and to be repatriated in times of international crisis. To this end, the Government shall issue to contractors promptly, free of charge and without restrictions all necessary visas, permits and authorizations.

25. Contractors, other than Moroccan nationals, hired exclusively to support MINURSO activities shall be exempt from payment of taxes on the services provided to MINURSO, including corporation tax, income tax, social security tax and other similar taxes arising directly from the provision of such services, as well as value-added tax.

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

Recruitment of local personnel

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

Currency

28. The Government undertakes to make available to MINURSO, against reimbursement in mutually acceptable currency, Moroccan dirhams required for the

use of MINURSO, including the pay of its members, at the rate of exchange most favourable to MINURSO.

VI. STATUS OF THE MEMBERS OF MINURSO

Privileges and immunities

29. The Special Representative, the Deputy Special Representative, the Force Commander of the military component, the Police Commissioner in charge of the security component and such high-ranking members of the Special Representative's staff as may be agreed upon with the Government shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

30. Officials of the United Nations assigned to the civilian component to serve with MINURSO remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

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

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

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

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

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

36. The Special Representative shall cooperate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of Morocco by the members of MINURSO, in accordance with the present Agreement.

Entry, residence and departure

37. The Special Representative and members of MINURSO shall, whenever so required by the Special Representative, have the right to enter, reside in and depart from the mission area.

38. The Government undertakes to facilitate the entry into and departure from the mission area of the Special Representative and of the members of MINURSO, and shall be kept informed of such movement. To this end, the Government shall expedite the issuance without charge of visas for the Special Representative and members of MINURSO. Members of MINURSO must have identification documents issued by the United Nations while in the mission area and current individual or collective passports together with a movement order issued by the United Nations for all entries into or departures from the mission area.

39. The Special Representative and members of MINURSO shall be exempt from immigration inspection and restrictions on entering into or departing from the mission area. They shall also be exempt from any regulations governing the residence of aliens in the mission area, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in the mission area.

Identification

40. The Special Representative shall issue to each member of MINURSO before or as soon as possible after such member's first entry into the mission area, as well as to all locally recruited personnel and to contractors, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 38 of the present Agreement, such identity card shall be the only document required of a member of MINURSO.

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

Uniform and arms

42. Military members and civilian police members of MINURSO shall wear, while performing official duties under the Settlement Plan, the national military or police uniform of their respective States with standard United Nations accoutrements. United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of MINURSO may be authorized by the Special Representative at other times. Military members and civilian police members of MINURSO and United Nations Security Officers designated by the Special Representative may possess and carry their service weapons while on duty in accordance with their orders. Without prejudice to the provisions of this paragraph, the procedures for implementation shall be specified in an arrangement which shall be agreed without delay between the competent Moroccan authorities and the United Nations.

Permits and licences

43. Subject to the provisions of paragraph 57, the Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for the operation by any member of MINURSO, including locally recruited personnel, of any MINURSO transport or communication equipment and for the practice of any profession or occupation in connection with the functioning of MINURSO,

provided that no licence to drive a vehicle or pilot an aircraft shall be issued to any person who is not already in possession of an appropriate and valid licence.

44. The Government agrees to accept as valid, and, if appropriate, to validate free of charge and without restrictions, licences and certificates issued by the competent authorities of other States relating to aircraft and vessels. Without prejudice to the foregoing, the Government also agrees to grant promptly, free of charge and without restrictions, the necessary authorizations, licences and certificates, as appropriate, for the purchase, use, operation and maintenance of aircraft and vessels.

45. Without prejudice to the provisions of paragraph 42, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative to a member of MINURSO for the carrying or use of firearms or ammunition in connection with the functioning of MINURSO.

Military police, arrest and transfer of custody and mutual assistance

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

47. The military police of MINURSO shall have the power of arrest in the mission area over the military members of MINURSO. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 46 above may take into custody any other person who commits an offence on the premises of MINURSO. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with the offence or disturbance on such premises.

48. Subject to the provisions of paragraphs 29 and 31, officials of the Government may take into custody any member of MINURSO:

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

(*b*) When such a member of MINURSO is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of MINURSO, whereafter the provisions of paragraph 53 shall apply mutatis mutandis.

49. When a person is taken into custody under paragraph 47 or paragraph 48 (*b*), MINURSO or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

50. MINURSO and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return within a period of time specified by the authority delivering them. Each

shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 47 to 49.

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

Jurisdiction

52. All members of MINURSO shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by MINURSO and after the expiration of the other provisions of the present Agreement.

53. Should the Government consider that any member of MINURSO has committed a criminal offence, it shall promptly inform the Special Representative and present to him any evidence available to it. Subject to the provisions of paragraph 29:

(*a*) If the accused person is a member of the civilian component or a member of the security component or a civilian member of the military component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 59 of the present Agreement;

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

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

(*a*) If the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 57 of the present Agreement shall apply;

(*b*) If the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of MINURSO is unable because of official duties or authorized absence to protect his interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than 90 days. Property of a member of MINURSO that is certified by the Special Representative to be needed by the defendant for the fulfillment of his official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of MINURSO shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Deceased members

55. The Special Representative shall have the right to take charge of and dispose of the body of a member of MINURSO, as well as that member's personal property, in accordance with United Nations procedures.

VII. LIMITATIONS ON THE LIABILITY OF THE UNITED NATIONS

56. Third-party claims for property losses or damage or for personal injury, illness or death linked to MINURSO or directly attributable to it (excluding losses, damage or injury attributable to operational necessity) which cannot be settled in accordance with United Nations internal procedures shall be settled in accordance with article 57 of the present Agreement, provided that the claims are submitted within six months of the time when the loss, damage or personal injury was sustained or, if the claimant was not and could not reasonably have been aware of the damage or loss, within six months of the time when it was discovered by the claimant, but not in any event later than one year after the termination of the mandate of MINURSO. Once its liability has been established, the United Nations shall pay compensation, subject to the financial limitations approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII. SETTLEMENT OF DISPUTES

57. Except as provided in paragraph 59, any dispute or claim of a private law character, not relating to damage attributable to the operational necessity of MINURSO, to which MINURSO or a member thereof is a party and over which the Moroccan courts do not have jurisdiction because of a provision of the present Agreement shall be settled by a standing claims commission to be established for that purpose. The Secretary-General of the United Nations and the Government shall each appoint a member of the commission and a chairman shall be appointed jointly by the Secretary-General and the Government. If the second member of the commission has not been appointed within 30 days of the appointment of the first member, the President of the International Court of Justice may, at the request of the party which appointed the first member, appoint the second member of the commission. If no agreement on the appointment of the chairman has been reached by the two parties within 30 days of the appointment of the second member of the commission, the President of the International Court of Justice may, at the request of either party, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the 30-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of 30 days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding. The awards of the commission shall be notified to the parties and, if against a member of MINURSO, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

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

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

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

IX. SUPPLEMENTAL ARRANGEMENTS

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

X. LIAISON

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

XI. MISCELLANEOUS PROVISIONS

63. Wherever the present Agreement refers to the privileges, immunities and rights of MINURSO and to the facilities the Government undertakes to provide to MINURSO and contractors, the Government shall have the ultimate responsibility for the implementation and fulfillment of such privileges, immunities, rights and facilities by the appropriate local authorities.

64. The present Agreement shall enter into force on the date of its signature by the Secretary-General of the United Nations or on his behalf and by the Government of Morocco.

65. The present Agreement shall remain in force until the departure of the final element of MINURSO, except that:

(*a*) The provisions of paragraphs 52, 59 and 60 shall remain in force;

(*b*) The provisions of paragraphs 56 and 57 shall remain in force until all claims submitted in accordance with paragraph 56 have been settled.

DONE at New York on 11 February 1999, in duplicate in the French language.

For the United Nations:

(*Signed*) Bernard MIYET
Under-Secretary-General
Department of Peacekeeping Operations

For the Government of the Kingdom of Morocco:

(*Signed*) Ahmed SNOUSSI
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations

(*b*) Agreement between the United Nations and the Government of the Republic of Mali on the enforcement of sentences of the International Tribunal for Rwanda. Signed at Bamako on 12 February 1999[5]

The Government of the Republic of Mali, hereinafter called "the requested State", and

The United Nations, acting through the International Tribunal for Rwanda, hereinafter called "the Tribunal",

Recalling article 26 of the Statute of the Tribunal adopted by the Security Council in its resolution 955 (1994) of 8 November 1994, according to which im-

prisonment of persons sentenced by the Tribunal shall be served in Rwanda or in any of the States on 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 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 Tribunal,

Have agreed as follows:

Article 1

PURPOSE AND SCOPE OF THE AGREEMENT

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

Article 2

PROCEDURE

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

2. The Registrar shall provide the following documents and items to the requested State 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/her further treatment in the requested State and any other factor relevant to the enforcement of the sentence;

(*d*) Certified copies of identification papers of the convicted person in the Tribunal's possession.

3. All communications to the requested State relating to matters provided for in this Agreement shall be made to the Minister in charge of Penitentiary Administration through the Minister in charge of Foreign Affairs.

4. The requested State shall promptly decide upon the request of the Registrar, in accordance with national law, and inform the Registrar of its decision whether or not to agree to receive the convicted person(s).

Article 3

ENFORCEMENT

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

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

3. 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

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

2. If, after transfer of the convicted person to the requested State, the Tribunal, in accordance with its Rules of Procedure and Evidence, orders that the convicted person appear as a witness in a trial before it, the convicted person shall be transferred temporarily to the Tribunal for that purpose, conditional on his/her return to the requested State within the period decided by the Tribunal.

3. The Registrar shall transmit the order for the temporary transfer of the convicted person to the national authorities of the requested State. The Registrar shall ensure the proper transfer of the convicted person from the requested State to the Tribunal and back to the requested State for the continued imprisonment after the expiration of the period of temporary transfer decided by the Tribunal. The convicted person shall receive credit for the period he/she may have spent in the custody of the Tribunal.

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 Tribunal, for which he/she has already been tried by the 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 convicted person(s) at any time and on a periodic basis by the International Committee of the Red Cross or such other person or body as the Tribunal may designate for that purpose. The frequency of such visits shall be determined by the International Committee or the designated person or body. The International Committee of the Red Cross or the designated person or body shall submit a confidential report based on the findings of these inspections to the requested State and to the President of the Tribunal.

2. Representatives of the requested State and the President of the Tribunal shall consult each other on the findings of the report referred to in paragraph 1. The President of the Tribunal may thereafter request the requested State to inform him/her of any changes made in the conditions of detention as suggested by the International Committee of the Red Cross or the designated person or body.

Article 7

INFORMATION

1. The requested State shall immediately notify the Registrar of the following:

(*a*) The completion of the sentence by the convicted person, two months prior to such completion;

(*b*) If the convicted person has escaped from custody before the sentence has been completed;

(*c*) If the convicted person is deceased.

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

Article 8

COMMUTATION OF SENTENCE, PARDON AND EARLY RELEASE

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

2. The President of the Tribunal shall determine, in consultation with the judges of the Tribunal, whether commutation of sentence, pardon or any form of early release is appropriate. The Registrar shall communicate the President's determination to the requested State, which shall act accordingly.

Article 9

TERMINATION OF ENFORCEMENT

1. The enforcement shall cease:

(*a*) When the sentence has been completed;

(*b*) Upon pardon of the convicted person or upon completion of the sentence as commuted in accordance with article 8 of this Agreement;

(*c*) Following a decision of the Tribunal, as provided for in paragraph 2 of this article;

(*d*) Upon the demise of the convicted person.

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

3. The competent authorities of the requested State shall terminate the enforcement of the sentence as soon as the requested State 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 a sentence, further enforcement has, for any legal or practical reason, become impossible, the requested State shall promptly so inform the Registrar. The Registrar shall make the appropri-

ate arrangements for the transfer of the convicted person. The competent authorities of the requested State shall allow at least sixty days following the notification of the Registrar before taking other measures on the matter.

Article 11

COSTS

1. Unless the parties agree otherwise:

(*a*) The Tribunal shall bear the expenses related to:

(i) The transfer of the convicted person to and from the requested State;

(ii) The repatriation of the convicted person upon completion of his/her sentence;

(iii) In the case of death, repatriation of the body of the convicted person;

(*b*) The requested State shall pay all other expenses incurred in the enforcement of the sentence.

2. The Tribunal undertakes to approach donor countries and donor agencies with a view to securing financial assistance for any projects aimed at upgrading to international standards imprisonment conditions under which convicted persons are to serve their sentences pursuant to this Agreement.

3. To that end, the requested State may, where necessary, submit to the Registrar a request relating to such projects as are referred to in the preceding paragraph for the purpose of arriving, through consultation, at a mutually agreed understanding on any necessary action.

4. The Tribunal, in approaching the donor countries or donor agencies referred to in paragraph 2 above, shall bring to their attention any special circumstances which may entail extraordinary costs in respect of a convicted person who is to serve a sentence in the requested State pursuant to this Agreement.

Article 12

SUBSTITUTION CLAUSE

In the event that the Tribunal is to be wound up, the Registrar will inform the Security Council of any sentences whose enforcement remains to be completed pursuant to this Agreement.

Article 13

ENTRY INTO FORCE

This Agreement shall enter into force provisionally upon the signature of both Parties, and definitively upon the date of notification by the requested State of ratification or approval of the Agreement by its competent authorities.

Article 14

DURATION OF THE AGREEMENT

1. Either of the Parties may, after consulting the other Party, terminate this Agreement by giving at least sixty days' prior notice in writing to the other Party of its intention that the Agreement be terminated.

2. This Agreement shall, however, continue to apply for a period not exceeding six months with regard to any convicted person in respect of whom the requested States is, at the time of the termination of this Agreement, enforcing a sentence pronounced by the Tribunal.

Article 15

AMENDMENT

This Agreement may be amended by mutual consent of the Parties.

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

DONE at Bamako this twelfth day of February 1999, in duplicate, in English and French, both texts being equally authentic.

For the Government of the Republic of Mali:

(*Signed*) Modibo SIDIBÉ
Minister of Foreign Affairs and Malians Abroad

For the United Nations:

(*Signed*) Agwu Ukiwe OKALI
Assistant Secretary-General Registrar of the International Tribunal for Rwanda

(*c*) Agreement between the United Nations and the Government of Sweden on the enforcement of sentences of the International Tribunal for the Former Yugoslavia. Signed at The Hague on 23 February 1999[6]

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

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

Recalling article 27 of the Statute of the International Tribunal ("the Statute") adopted by the Security Council in its 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 Sweden 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 requested State 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;

(*d*) Any documents that the International Tribunal may have which show that the convicted person has strong ties with Sweden.

3. The requested State shall decide without delay 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. The 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 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 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 at any time and on a periodic basis, the frequency of visits to be determined by the International Committee. The International Committee of the Red Cross will submit a confidential report based on the findings of these inspections to the requested State and to the President of the International Tribunal.

2. The requested State 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 requested State to report to him any changes in the conditions of detention suggested by the International Committee of the Red Cross.

Article 7

INFORMATION

1. The requested State 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 requested State shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

Article 8

EARLY RELEASE, PARDON AND COMMUTATION OF SENTENCES

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

2. The International Tribunal will give its view as to whether early release, pardon or commutation of the sentence is appropriate. The requested State will take these views into consideration and respond to the International Tribunal prior to taking any decision in the matter.

3. Following the receipt of the response, the International Tribunal may request that the requested State transfer the convicted person in accordance with article 9, paragraph 2, in which event the requested State shall transfer the convicted person, as stipulated in that paragraph.

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 of this article.

2. The International Tribunal may at any time request the termination of the enforcement in the requested State and the requested State shall, in accordance with its national law, 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 requested State 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 upon the 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 twenty-third day of February 1999, in duplicate, in the English language.

For the United Nations:

(*Signed*) Dorothee de Sampayo GARRIDO-NIJGH
Registrar
International Tribunal for the Former Yugoslavia

For the Government of Sweden:

(*Signed*) Anna LINDH
Minister for Foreign Affairs

(*d*) Exchange of letters constituting an agreement between the United Nations and the Government of Saint Lucia, concerning arrangements for the Caribbean Regional Seminar in accordance with the plan of action for the International Decade for the Eradication of Colonialism. Signed at New York on 15 and 30 April 1999[7]

I

LETTER FROM THE UNITED NATIONS

15 April 1999

Excellency,

I have the honour to refer to the arrangements for the Caribbean Regional Seminar in accordance with the plan of action for 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 National Insurance Scheme (NIS Bldg.), Castries, Saint Lucia, from 25 to 27 May 1999. 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 the 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. *Premises for the Seminar*

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

3. *Communication equipment*

The Government of Saint Lucia 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.

4. *Office equipment*

The Government of Saint Lucia will assist the United Nations in making arrangements with private companies to hire office equipment needed for the conduct of the Seminar.

5. *Accommodation*

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

6. *Transportation*

The Government of Saint Lucia will, as a matter of courtesy, provide three (3) 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.

7. *Liaison and other local personnel*

The Government of Saint Lucia will provide six (6) Foreign Service trainees as Liaison Officers to the Seminar and as guides to delegations and participants. The Government of Saint Lucia will assign one (1) Protocol Officer to assist in the planning and coordination of the Seminar. The Government of Saint Lucia will provide the following seven (7) support staff to the Seminar:

(*a*) Three (3) secretaries;

(*b*) One (1) administrative assistant;

(*c*) Three (3) machine operators.

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

8. *Security*

The security coverage for the Seminar will be the responsibility of the Government of Saint Lucia.

9. *Medical facilities*

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

10. *Exemption from departure tax*

The Government of Saint Lucia shall exempt United Nations personnel, holders of diplomatic passports and special invitees/guests from 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, to which Saint Lucia has been a Party since 27 August 1986, shall be applicable in respect of the Seminar. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Convention 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 into and exit from Saint Lucia. 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 Saint Lucia will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) death of or injury to persons or damage to or loss of property in conference or office premises provided for the Seminar; (ii) death of or injury to persons or damage to or loss of 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 indemnify and 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 decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the Parties, be binding on both of them.

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 Saint Lucia regarding the provision of host facilities by your Government for the Seminar.

(*Signed*) Jin YONGJIAN
Under-Secretary-General
for General Assembly Affairs and Conference Services

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF SAINT LUCIA TO THE UNITED NATIONS

30 April 1999

Dear Mr. Jin Yongjian:

I have the honour, on behalf of the Government of Saint Lucia, to confirm the agreement between the United Nations and the Government of Saint Lucia regarding the provision of host facilities by Saint Lucia as set forth in document SC24/19/99, for the Caribbean Regional Seminar in accordance with the plan of action for the International Decade for the Eradication of Colonialism.

(*Signed*) Julian R. HUNTE
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations

(*e*) Agreement between the United Nations, Indonesia and Portugal regarding the modalities for the popular consultation of the East Timorese through a direct ballot. Signed at New York on 5 May 1999[8]

The Governments of Indonesia and Portugal and the Secretary-General of the United Nations,

Agree as follows:

1. A secure environment devoid of violence or other forms of intimidation is a prerequisite for the holding of a free and fair ballot in East Timor. Responsibility to ensure such an environment as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities. The absolute neutrality of the TNI (Indonesian Armed Forces) and the Indonesian Police is essential in this regard.

2. The Commission on Peace and Stability established in Dili on 21 April 1999 should become operational without delay. The Commission, in cooperation with the United Nations, will elaborate a code of conduct, by which all parties should abide, for the period prior to and following the consultation, ensure the laying down of arms and take the necessary steps to achieve disarmament.

3. Prior to the start of the registration, the Secretary-General shall ascertain, based on the objective evaluation of the United Nations mission, that the necessary security situation exists for the peaceful implementation of the consultation process.

4. The police will be solely responsible for the maintenance of law and order. The Secretary-General, after obtaining the necessary mandate, will make available a number of civilian police officers to act as advisers to the Indonesian Police in the discharge of their duties and, at the time of the consultation, to supervise the escort of ballot papers and boxes to and from the polling sites.

DONE in New York on this 5th day of May 1999.

For the Government of Indonesia:

(*Signed*) Ali ALATAS
Minister for Foreign Affairs
Indonesia

For the United Nations:

(*Signed*) Kofi A. ANNAN
Secretary-General
United Nations

For the Government of Portugal:

(*Signed*) Jaime GAMA
Minister for Foreign Affairs
Portugal

(*f*) Exchange of letters constituting an agreement between the United Nations and the Government of the People's Republic of China on the United Nations/China/European Space Agency Conference on Space Applications in Promoting Sustainable Agriculture, hosted by the Government of the People's Republic of China (Beijing, 14-17 September 1999). Signed at Vienna on 10 May and 7 June 1999[9]

I

LETTER FROM THE UNITED NATIONS OFFICE AT VIENNA

10 May 1999

Sir,

I have the honour to refer to resolution 53/45 adopted by the General Assembly on 3 December 1998, and in particular to its paragraph 19, by which the General Assembly endorsed the United Nations Programme on Space Applications for 1999, which included the organization of a conference on applications of space technology in sustainable agricultural development.

The United Nations has received with appreciation the offer from Your Excellency's Government to host the United Nations/China/European Space Agency Conference on Space Applications in Promoting Sustainable Agriculture. As Your Excellency is aware, this course will be hosted in Beijing from 14 to 17 September 1999.

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

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

1. The United Nations and the European Space Agency shall provide international air travel for up to 20 participants among nominees from developing countries that are invited to participate in the Conference 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. *Participation and language*

1. The total number of participants will be limited to 85 (up to 40 foreign participants and up to 45 national participants).

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

C. *The Government of the People's Republic of China*

1. The Government, through its Ministry of Science and Technology, will act as host to the Conference, which will be held in Beijing.

2. The Government will designate an official representing the Ministry of Science and Technology to act as liaison officer between the United Nations and the Government for making the necessary arrangements concerning the contributions described in the following paragraph.

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

(*a*) Room and per diem for five (5) days for up to twenty (20) participants from developing countries;

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

(*c*) Appropriate premises for the offices and for the other working areas of the United Nations Secretariat staff responsible for the Conference, 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 Conference and maintained in good repair by appropriate personnel for the duration of the Conference;

(*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 Conference;

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

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

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

(*i*) All official transportation within China for all participants in the Conference;

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

(*k*) Local transportation for the United Nations staff responsible for the Conference for official purposes during the Conference;

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

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

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

D. *Privileges and immunities*

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

1. (*a*) The Convention on the Privileges and Immunities of the United Nations (1946), acceded to by the People's Republic of China on 11 September 1979, shall be applicable in respect of the Conference. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Conference shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Conference shall be accorded the privileges and immunities provided under 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 Conference shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Conference.

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

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

(*b*) Injury or damage to person or property occurring during use of the transportation referred to in paragraph 3 (*h*), (*i*), (*j*) and (*k*) of section C;

(*c*) The employment for the Conference of personnel provided or arranged by your Government, and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

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 that is not settled by negotiation 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 terms, this exchange of letters shall constitute an Agreement between the United Nations and the Government of the People's Republic of China regarding the provision of host facilities by your Government for the Conference.

(*Signed*) Pino ARLACCHI
Director-General
United Nations Office at Vienna

II

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

7 June 1999

Dear Sir,

Re: Exchange of Letters on the United Nations/China/European Space Agency Conference on Space Applications in Promoting Sustainable Agriculture, Hosted By the Government of the People's Republic of China (Beijing, 14-17 September 1999)

I have the honour to acknowledge receipt of your letter dated 10 May 1999 regarding the exchange of letters between the United Nations and the Government of the People's Republic of China on the above-mentioned Conference.

I consent to your proposal in the text of the exchange of letters that upon your receipt of my confirmation in writing of the terms in the revised text, the exchange of letters constitute an Agreement between the United Nations and the Government of the People's Republic of China regarding the provision of host facilities by my Government for the Conference.

I am hereby writing the letter of confirmation of your proposal. My letter shall accordingly make the revised text an Agreement between the United Nations and the Chinese Government upon your receipt.

(*Signed*) Zhang YISHAN
Ambassador
Permanent Representative
of the People's Republic of China
to the United Nations Office at Vienna

(*g*) Memorandum of Understanding between the United Nations and the Republic of Rwanda to regulate matters of mutual concern relating to the office in Rwanda of the International Tribunal for Rwanda. Signed at Kigali on 3 June 1999[10]

Whereas the Security Council of the United Nations, acting under Chapter VII of the Charter of the United Nations, decided, by its resolution 955 (1994) of 8 November 1994, inter alia, "to establish an international tribunal for the sole pur-

pose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994" (hereinafter "the International Tribunal for Rwanda"),

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

Whereas the Security Council, in paragraph 6 of its resolution 955 (1994) of 8 November 1994, decided further, inter alia, that "an office will be established and proceedings will be conducted in Rwanda, where feasible and appropriate, subject to the conclusion of ... appropriate arrangements"; and whereas this office has been established,

Recalling the letter of the Secretary-General of the United Nations dated 11 August 1997 addressed to the Minister for Foreign Affairs and Cooperation of the Republic of Rwanda on the status of the office and requesting the Government of Rwanda to extend to that office and its staff the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations, to which the Republic of Rwanda is a party,

Noting that a reply to that letter from the Minister for Foreign Affairs and Cooperation of the Republic of Rwanda has not been received by the United Nations,

Whereas the United Nations and the Republic of Rwanda wish to conclude a comprehensive agreement regulating matters arising from the establishment and proper functioning of the International Tribunal for Rwanda in the Republic of Rwanda,

Now therefore, pending the conclusion of such a comprehensive agreement, the United Nations and the Republic of Rwanda have in this Memorandum of Understanding agreed as follows:

1. The Government of Rwanda, in fulfillment of its obligations under Article 105 of the Charter of the United Nations shall continue extending to the Tribunal's Office in Rwanda (hereafter "the Office"), in its capacity as an organ of the United Nations, and to its property, funds, assets and staff, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations (the Convention).

2. The Government of Rwanda shall extend:

—To the Judges, to the Prosecutor, to the Registrar, to the Deputy Prosecutor, and to other key members (P-4 and above) of the Office whose names shall be communicated in advance to the Government of Rwanda for that purpose, the privileges, immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law;

—To officials of the United Nations Secretariat assigned to the Office whose names shall be communicated to the Government of Rwanda for that purpose, the privileges and immunities to which they are entitled under articles V and VII of the Convention;

—To other persons assigned to the Office whose names shall be communicated to the Government of Rwanda for that purpose, the privileges and immuni-

ties accorded to experts on mission for the United Nations, in accordance with article VI of the Convention.

3. The United Nations and the Government of Rwanda also agree that privileges and immunities necessary for the smooth running of the Office also include the following rights and facilities:

(*a*) The right of unimpeded and prompt entry into and exit from the territory of Rwanda for its staff and in respect of its property, supplies, equipment and means of transport;

(*b*) Complete freedom of movement throughout the territory of Rwanda for its staff and similar freedom in respect of property, equipment and means of transport;

(*c*) The right of access to all prisons and detention and interrogation centres in Rwanda, in coordination with the Government. The members of the Office may have private discussions with any person detained or found in such places;

(*d*) The right of access to all documents the consultation of which may be necessary for the smooth functioning of the Office;

(*e*) The right to make direct contacts with the national and local authorities in the various branches of the Government of Rwanda, including the armed forces;

(*f*) The right to question victims and witnesses, to gather evidence and all useful information and to conduct investigations in the field;

(*g*) The right to make direct contacts with individuals, intergovernmental and non-governmental organizations, private institutions and the media;

(*h*) The right to take all necessary steps, using its own resources, to have all databases and information collected transferred;

(*i*) Exemption from all direct taxes, import and export duties, registration fees and other charges. However, the payment of service fees shall not be exempted;

(*j*) The right to display the United Nations flag on its premises and on its vehicles;

(*k*) Unlimited right to communicate by radio, satellite or other means of communication with United Nations Headquarters and between the various offices, including the telecommunications network (radio and satellite) of the United Nations and all other means, telephone, telegraph, etc. The telecommunication services shall be operated in accordance with the International Telecommunication Convention and the Regulations on Radio Communications. The frequencies used to operate stations shall be determined in cooperation with the Government, and the United Nations shall notify the Frequency Registration Board accordingly;

(*l*) The right to make all necessary arrangements, using its own resources, for the sorting and forwarding of private mail addressed to members of the Office or sent by them. The Government of Rwanda shall be informed of the nature of these arrangements and it shall not interfere with them or in any way censor mail for the Office or its staff.

4. It is understood that the Government of Rwanda shall, as far as possible, provide the Office with appropriate premises for conducting its official and administrative activities throughout the territory of Rwanda. The premises used by the Office and its staff shall be inviolable and shall be under the sole control and authority of the International Tribunal for Rwanda.

5. This Memorandum of Understanding shall enter into force upon signature.

6. This Memorandum of Understanding shall remain in force until superseded by the comprehensive agreement referred to above, which shall be concluded by the Parties as soon as possible.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Memorandum of Understanding.

DONE at Kigali this 3rd day of June the year 1999 in the English language.

For the United Nations:	*For the Republic of Rwanda:*
(*Signed*) Hans CORELL	(*Signed*) Amri SUED
Under-Secretary General for Legal Affairs	*Minister for Foreign Affairs*
The Legal Counsel	*and Regional Cooperation*

(h) Supplementary arrangement between the United Nations and the International Organization for Migration. Signed at New York on 8 June 1999[11]

The United Nations and the International Organization for Migration (IOM),

Recalling the Cooperation Agreement concluded between them on 25 June 1996, by which they agreed to act in close collaboration and hold consultations regularly on all matters of common interest,

Recalling also article VI of the Cooperation Agreement, by which the Parties agreed to act jointly in the implementation of projects that are of common interest, through special arrangements defining the modalities for their participation and the expenses payable by each Organization,

Recalling further the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor concluded on 5 May 1999, and the Agreement regarding the modalities for the popular consultation of the East Timorese through a direct ballot, annexed thereto,

Have agreed to conclude the present Supplementary Arrangement, hereinafter the Arrangement, with a view to establishing modalities of cooperation in the organization of a popular consultation on the status of East Timor on the basis of a direct, secret and universal ballot.

Article 1

The United Nations and IOM shall cooperate in the organization of the popular consultation to be held on 8 August 1999 at locations of major concentration of East Timorese outside East Timor (in Indonesia, Mozambique, Macao, Portugal and the United States of America) (hereinafter "external voting"), subject to agreements concluded between the United Nations and the host country concerned.

Article 2

Overall responsibility for the conduct of the consultation process resides with the United Nations. IOM shall be responsible for the organization of the external voting process, including voter registration and balloting, and related information dissemination activities as may be agreed upon between the Parties.

Article 3

The United Nations shall bear all costs relating to the external voting process and other services provided by IOM hereunder, in accordance with the budget agreed upon for this purpose by the Parties and attached to this Arrangement as an annex.

The budget may be amended by mutual written agreement.

Upon the expiration or termination of this Arrangement, IOM shall submit financial reports to the United Nations, which shall include detailed information on all services and activities provided by IOM hereunder.

Article 4

IOM shall be responsible for the procurement of goods and services required to support the external voting process. These and related operating costs, including overheads, shall be reimbursed by the United Nations in accordance with the budget agreed by the Parties, which may be amended by mutual agreement.

Within ten days following the signature of this Arrangement, the United Nations will deposit 50 per cent of the budget in an IOM-designated account; a further 40 per cent will be deposited within one month following the signature and the remaining 10 per cent within 30 days following submission of the final financial reports.

Article 5

The United Nations shall seek the agreement of each host country for the provision of adequate premises free of charge for registration centres and polling stations.

Article 6

Pursuant to article VI of the Cooperation Agreement, a United Nations Certificate shall be issued to staff of IOM performing functions or traveling on official business for the United Nations.

The United Nations shall seek the agreement of the host country for the applicability, mutatis mutandis, of the 1946 Convention on the Privileges and Immunities of the United Nations to IOM, and for any other facilities necessary for the conduct of the voting process.

Article 7

The Secretariat of the United Nations and the Administration of IOM shall consult each other regularly on matters relating to the implementation of this Arrangement.

Article 8

Any dispute, controversy or claim arising out of or relating to the Agreement, including its invalidity, breach or termination, shall be settled amicably through discussion and negotiation.

Article 9

This Arrangement shall enter into force on the date of its signature by the duly authorized representatives of the two organizations and shall remain in force until the completion of the voting process and the settlement of all pending issues related thereto.

IN WITNESS WHEREOF, the undersigned representatives of the Secretariat of the United Nations and the Administration of the International Organization for Migration have signed the present Arrangement.

SIGNED this 8th day of June 1999 at New York in two originals in the English language.

For the United Nations:

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

For the International Organization for Migration:

(*Signed*) Robert G. PAIVA
Permanent Observer to the United Nations International Organization for Migration

ANNEX

Summary IOM budget for East Timor external voting

(*In United States dollars*)

	Country office	*Quantity of voter registration centres*	*Cost per voter registration centre*	*Total*
Coordinating office, Darwin	242,000			
Indonesia	180,000	10	50,000	500,000
Portugal	85,000	2	72,000	144,000
United States	85,000	1	51,000	51,000
Mozambique	85,000	1	51,000	51,000
Macao	85,000	1	51,000	51,000
Subtotal	762,000			797,000
Total coordinating offices and voter registration centres	1,559,000			
Overhead (10 per cent)	155,900			
GRAND TOTAL	1,714,900			

(*i*) Memorandum of Understanding between the United Nations (United Nations Office for Drug Control and Crime Prevention) and the United Nations Interregional Crime and Justice Research Institute and the Government of the Republic of Hungary regarding a joint pilot project in the framework of the global programme against corruption. Signed at Budapest on 9 June 1999[12]

The United Nations Centre for International Crime Prevention, Office for Drug Control and Crime Prevention (hereinafter called "the Centre") and the United Nations Interregional Crime and Justice Research Institute (hereinafter called "the Institute") and the Government of the Republic of Hungary (hereinafter called "the Government"),

Aware of the threat posed by corruption to democracy, the rule of law and economic activity,

Drawing attention to the increasing number of international instruments recently developed to fight corruption, including the Organization for Economic Cooperation and Development Convention on Combating Bribery in International Business Transactions, signed at Paris on 17 December 1997, the Council of Europe Criminal Law Convention on Corruption and Agreement Establishing the Group of States against Corruption, the conventions and related protocols on corruption of the European Union as well as best practices, such as those compiled by the Financial Action Task Force on Money Laundering, the Basel Committee on Banking Supervision and the International Organization of Securities Commissions,

Commending the efforts in the United Nations to address the problem of corruption at the global level, including the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, the International Code of Conduct for Public Officials and the ongoing development of the draft United Nations Convention against Transnational Organized Crime and protocols thereto by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, established pursuant to General Assembly resolution 53/111 of 9 December 1998,

Welcoming the elaboration by the United Nations Centre for International Crime Prevention Office for Drug Control and Crime Prevention, in cooperation with the United Nations Interregional Crime and Justice Research Institute, of a global programme against corruption,

Taking into account the continuous consultations between the Government of Hungary and the Office for Drug Control and Crime Prevention to cooperate in the fight against corruption within the framework of the above global programme against corruption,

Agree as follows:

Article 1

The Centre and the Institute and the Government will cooperate in developing and implementing a joint pilot project in the framework of the global programme against corruption, along the following lines:

(*a*) Organization of a scientific expert meeting for identifying the methodology and tools for a rapid assessment in the field of corruption;

(*b*) Developing and carrying out a rapid assessment of the corruption situation in Hungary;

(*c*) Joint evaluation of the findings of the rapid assessment;

(*d*) Developing and carrying out a comprehensive analysis of the corruption situation in Hungary;

(*e*) Organization of an international seminar to present and discuss the results of the analysis and sharing the applicable methodological tools with countries interested;

(*f*) Testing the transparency and monitoring mechanisms of the global programme against corruption.

Once agreement has been reached by the parties on the content of the above joint activities, a project document should be formulated in accordance with United Nations rules and practice, containing, inter alia, information on budget, timetable of activities and respective tasks of the parties in accordance with articles 2 and 3.

The launching of project activities may begin as soon as possible subject to the availability of required funding.

Article 2

The Centre and the Institute, within the framework of the project document mentioned above, will:

(*a*) Make every effort to secure the necessary financial resources, including contributions from interested donors as required, and provide international expertise to support the joint pilot project in order to ensure its implementation;

(*b*) Carry out the activities foreseen by the joint pilot project as the Centre and the Institute and the competent Hungarian authorities may agree;

(*c*) Identify, together with the competent Hungarian authorities, relevant partners for the proper coordination and implementation of activities against corruption.

Article 3

The Government, through the Ministries of Justice and Interior and within the framework of the above-mentioned project document, will:

(*a*) Provide relevant information needed in the preparation and implementation of the joint pilot project in close cooperation with the competent Hungarian authorities;

(*b*) Provide national expertise for developing and implementing the joint pilot project;

(*c*) Consult with the Centre and the Institute, as required, in priority areas relevant for the joint pilot project.

Article 4

Following the completion of the joint pilot project, the Centre and the Institute and the Government will discuss possible future forms of cooperation outlined in the global programme against corruption.

Article 5

Nothing in this Memorandum of Understanding shall imply or be construed as a waiver or modification of the privileges and immunities of the United Nations.

Article 6

This Memorandum of Understanding shall enter into force on the date of signing by the Parties.

Article 7

This Memorandum of Understanding may be terminated by any Party by giving a written notice of one month to the other Party.

DONE at Budapest, in duplicate, in English and Hungarian, on this ninth day of June one thousand nine hundred and ninety-nine.

(*Signed*) Pino ARLACCHI
for the Office for Drug Control and Crime Prevention and for the United Nations Interregional Crime and Justice Research Institute

(*Signed*) Ibolya DAVID
for the Government of the Republic of Hungary

(*j*) Memorandum of Understanding between the United Nations and the Government of the United Kingdom of Great Britain and Northern Ireland for the contribution of personnel to the International Tribunal for the Former Yugoslavia. Signed at The Hague on 10 June 1999[13, *]

Whereas the United Nations Security Council, in its resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993, decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace (hereinafter "the International Tribunal"),

Whereas by paragraph 5 of resolution 827 (1993) the Security Council urged States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel,

Whereas the United Nations Security Council, in its resolution 1244 (1999) of 10 June 1999, decided on the deployment in Kosovo, under United Nations auspices, of an international civil and security presence,

Whereas the United Nations Security Council, in its resolution 1244 (1999) of 10 June 1999, demanded full cooperation by all concerned, including the international security presence, with the International Tribunal,

Whereas the Secretary-General may accept type II gratis personnel on an exceptional basis in accordance with the conditions established by the General Assembly in its resolution 51/243 of 15 September 1997 and guidelines approved by the General Assembly in its resolution 52/234 of 26 June 1998,

Whereas under General Assembly resolution 51/243, on 9 June 1999 the Secretary-General proceeded to approve a request of the Prosecutor of the International Tribunal to accept experts to provide temporary and urgent assistance for the specialized functions as identified by the Prosecutor, for a period of six months,

Whereas the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "the Government") offered to make available to the United Nations the services of qualified personnel to assist, in accordance with the terms of this Memorandum of Understanding,

Now therefore the United Nations and the Government (hereinafter "the Participants") have reached the following understanding:

Paragraph I

TERMS AND CONDITIONS OF THE GOVERNMENT

1. The Government will make available to the International Tribunal for the duration and purposes of this Memorandum of Understanding the services of experts for certain specialized functions as identified by the Prosecutor of the International Tribunal (hereinafter "United Kingdom Personnel") listed in annex I hereto. Changes and modifications to annex I may be made with the mutual consent of the Participants.

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* Annexes are not published herein.

2. The Government will pay all expenses in connection with the services of the United Kingdom Personnel, including salaries, travel costs to and from the location where the United Kingdom Personnel are based, and allowances and other benefits to which they are entitled, except as hereinafter provided. In this regard, annual leave may be taken by United Kingdom Personnel in accordance with their terms of service with the Government but may not exceed leave entitlements of staff members. Accordingly, United Kingdom Personnel accepted for a period of six months or less may be granted leave up to a maximum of one and one half days for each full month of continuous service. United Kingdom Personnel accepted for a period of more than six months and United Kingdom Personnel whose services are extended beyond six months may be granted leave up to a maximum of two and one half days for each full month of continuous service. Leave plans must be approved in advance by, or on behalf of, the head of the United Nations department or office concerned.

3. The Government will ensure that during the entire period of service under this Memorandum of Understanding, the United Kingdom Personnel are covered by adequate medical and life insurance, as well as insurance coverage for service-incurred illness, disability or death, with extended war risk coverage.

Paragraph II

TERMS AND CONDITIONS OF THE UNITED NATIONS

1. The United Nations will, as appropriate, provide the United Kingdom Personnel with office space, support staff and other resources necessary to carry out the tasks assigned to them.

2. Costs incurred by United Kingdom Personnel undertaking official travel in the discharge of their functions, in so far as not provided by the international civil and security presences deployed under United Nations auspices in Kosovo, will be paid by the United Nations on the same basis as costs incurred by staff members, including payment of daily or mission subsistence allowance, as applicable.

3. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death of the United Kingdom Personnel, arising out of or related to the provision of services under this Memorandum of Understanding, except where such illness, injury or death results directly from the gross negligence of the officials or staff of the United Nations. Any amounts payable by the United Nations will be reduced by amounts of any coverage under the insurance referred to in article I, section 3, of this Memorandum of Understanding.

Paragraph III

TERMS AND CONDITIONS OF THE UNITED KINGDOM PERSONNEL

The Government consents to the terms and obligations specified below, and will, as far as applicable, ensure that the United Kingdom Personnel performing services under this Memorandum of Understanding comply with these terms and conditions:

(*a*) The United Kingdom Personnel will perform their functions under the authority, and in full compliance with, the instructions of the Prosecutor of the International Tribunal, and any person acting on his or her behalf;

(*b*) The United Kingdom Personnel will respect the impartiality and independence of the United Nations and will neither seek nor accept instructions regard-

ing the services performed under this Memorandum of Understanding from any Government or from any authority external to the International Tribunal;

(*c*) The United Kingdom Personnel will refrain from any conduct which would adversely reflect on the United Nations and will not engage in any activity which is incompatible with the aims and objectives of the United Nations;

(*d*) The United Kingdom Personnel will comply with all rules, regulations, instructions, procedures or directives issued by the United Nations and the International Tribunal;

(*e*) The United Kingdom Personnel will exercise the utmost discretion in all matters relating to their functions and will not communicate, at any time, without the authorization of the Prosecutor of the International Tribunal, to the media or to any institution, person, Government or other authority external to the United Nations, any information that has not been made public, and which has become known to them by reason of their association with the United Nations. They will not use any such information without the written authorization of the Prosecutor of the International Tribunal, and in any event, such information will not be used for personal gain. These obligations do not lapse upon expiration of this Memorandum of Understanding;

(*f*) The members of the United Kingdom Personnel will sign an understanding in the form attached to this Memorandum of Understanding in annex II.

Paragraph IV

LEGAL STATUS OF THE UNITED KINGDOM PERSONNEL

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

2. While performing functions for the United Nations, the United Kingdom Personnel will be considered as "experts on mission" within the meaning of article VI, sections 22 and 23, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

Paragraph V

ACCOUNTABILITY

1. Unsatisfactory performance or failure to conform to the standards of conduct set out above may lead to termination of service, for cause, at the initiative of the United Nations. One month's notice will be given in such cases.

2. Any serious breach of the duties, terms and conditions which, in the view of the Secretary-General, would justify separation before the end of the notice period will be immediately reported to the Government, with a view to obtaining agreement on an immediate cessation of service. The Secretary-General may decide to limit or bar access to United Nations premises of the individual involved when the circumstances so warrant.

3. The Government will reimburse the United Nations for financial loss or for damage to United Nations–owned equipment or property caused by United Kingdom Personnel provided by the Government if such loss or damage (*a*) occurred outside the performance of services with the United Nations, or (*b*) arose or resulted from gross negligence or wilful misconduct or violation or reckless disregard of applicable rules and policies by such United Kingdom Personnel.

Paragraph VI

THIRD-PARTY CLAIMS

The United Nations will be responsible for dealing with claims by third parties where the loss of or damage to their property, or death or personal injury, was caused by the actions or omissions of the United Kingdom Personnel in the performance of services to the United Nations under the agreement with the Government. However, if the loss, damage, death or injury arose from gross negligence or wilful misconduct of the United Kingdom Personnel provided by the donor, the Government will be liable to the United Nations for all amounts paid by the United Nations to the claimants and all costs incurred by the United Nations in settling such claims.

Paragraph VII

CONSULTATION

The United Nations and the Government will consult with each other in respect of any matter that may arise in connection with this Memorandum of Understanding.

Paragraph VIII

SETTLEMENT OF DISPUTES

Any disputes, controversy or claim arising out of, or relating to, this Memorandum of Understanding will be settled by negotiation or other mutually agreed mode of settlement.

Paragraph IX

ENTRY INTO OPERATION, DURATION AND TERMINATION

This Memorandum of Understanding will enter into operation on 10 June 1999, and will remain in operation for six months, unless terminated earlier by either Participant upon one month's written notice to the other Participant. The Memorandum of Understanding may be extended with the consent of both Participants on the same conditions and for a further agreed period jointly decided on.

Paragraph X

AMENDMENT

This Memorandum of Understanding may be amended by written approval of both Participants. Each Participant will give full consideration to any proposal for an amendment made by the other Participant.

The foregoing record represents the understandings reached between the Government of the United Kingdom of Great Britain and Northern Ireland and the United Nations upon the matters referred to therein.

SIGNED in duplicate by the representative of the Participants at The Hague on the tenth day of June 1999 in the English language.

For the United Nations:

(*Signed*) Dorothee de Sampayo GARRIDO-NIJGH
Registrar

For the Government of the United Kingdom of Great Britain and Northern Ireland:

(*Signed*) Rosemary SPENCER
Ambassador

(*k*) Memorandum of Understanding between the United Nations and the Government of Australia establishing modalities of cooperation in the organization of a popular consultation on the status of East Timor. Signed at New York on 18 June 1999[14]

The United Nations and the Government of Australia,

Noting the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor concluded on 5 May 1999, and the Agreement regarding the modalities for the popular consultation of the East Timorese through a direct ballot, annexed thereto,

Have mutually determined to conclude the present Memorandum of Understanding with a view to establishing modalities of cooperation in the organization of a popular consultation on the status of East Timor on the basis of a direct, secret and universal ballot.

Paragraph 1

The United Nations and the Government of Australia acting through the Australian Electoral Commission, will cooperate in the organization of the popular consultation to be held on 8 August 1999 outside East Timor at locations of major East Timorese concentration in Australia (Sydney, Darwin, Perth and Melbourne) (hereinafter "external voting").

Paragraph 2

Overall responsibility for the conduct of the consultation process resides with the United Nations. The Australian Electoral Commission will be responsible for the organization of the external voting process, including voter registration and the balloting, and other related voting responsibilities in accordance with the Directions relating to the Popular Consultation of the People of East Timor through a Direct Ballot agreed upon between the Parties.

Paragraph 3

The Australian Electoral Commission will bear the costs of the voting process.

Paragraph 4

The Chief Electoral Officer of the United Nations Assistance Mission in East Timor and the Administration of the Australian Electoral Commission will consult each other regularly on matters relating to the implementation of this Memorandum of Understanding.

Paragraph 5

This Memorandum of Understanding will take effect on the date of its signature by the duly authorized representatives of the two Parties.

IN WITNESS THEREOF, the undersigned representatives of the Secretariat of the United Nations and the Government of Australia have signed the present Memorandum of Understanding.

SIGNED this 18th day of June 1999 at New York in two originals in the English language.

For the United Nations:

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

For the Government of Australia:

(*Signed*) Penelope Anne WENSLEY
Permanent Representative of Australia
to the United Nations

(*l*) Memorandum of Agreement between the United Nations and the Government of the United States of America for the contribution of personnel to the International Tribunal for the Former Yugoslavia. Signed at New York on 2 July 1999[15]

Whereas the United Nations Security Council, in its resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993, decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace (hereinafter "the International Tribunal"),

Whereas by paragraph 5 of resolution 827 (1993) of 25 May 1993 the United Nations Security Council urged States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel,

Whereas the United Nations Security Council, in its resolution 1244 (1999) of 10 June 1999, decided on the deployment in Kosovo, under United Nations auspices, of an international civil and security presence,

Whereas the United Nations Security Council, in its resolution 1244 (1999) of 10 June 1999, demanded full cooperation by all concerned, including the international security presence, with the International Tribunal,

Whereas the Secretary-General may accept type II gratis personnel on an exceptional basis in accordance with the conditions established by the General Assembly in its resolution 51/243 of 15 September 1997 and guidelines approved by the General Assembly in its resolution 52/234 of 26 June 1998,

Whereas under General Assembly resolution 51/243, on 9 June 1999 the Secretary-General proceeded to approve a request of the Prosecutor of the International Tribunal to accept experts to provide temporary and urgent assistance for the specialized functions as identified by the Prosecutor, for a period of six months,

Whereas the Government of the United States of America (hereinafter "the Government") offered to make available to the United Nations the services of qualified personnel to assist, in accordance with the terms of this Memorandum of Agreement,

Now therefore the United Nations and the Government (hereinafter "the Parties") have reached the following understanding:

Article I

OBLIGATIONS OF THE GOVERNMENT

1. The Government agrees to make available to the International Tribunal for the duration and purposes of this Agreement the services of expert personnel (hereinafter "United States Personnel") listed in annex I hereto. Changes and modifications, to the annex may be made with the agreement of the Parties.

2. The Government undertakes to pay all expenses in connection with the services of the United States Personnel, including salaries, travel costs to and from the location where the United States Personnel are based, and allowances and other benefits to which they are entitled, except as hereinafter provided. In this regard, annual leave may be taken by United States Personnel in accordance with their terms of service with the Government but may not exceed leave entitlements of staff members. Accordingly, United States Personnel accepted for a period of six months or less may be granted leave up to a maximum of one and one half days for each full month of continuous service. United States Personnel accepted for a period of more than six months and United States Personnel whose services are extended beyond six months may be granted leave up to a maximum of two and one half days for each full month of continuous service. Leave plans must be approved in advance by, or on behalf of, the head of the United Nations department or office concerned.

3. The Government undertakes to ensure that during the entire period of service under this Agreement, the United States Personnel are covered by adequate medical and life insurance, as well as insurance coverage for service-incurred illness, disability or death, with extended war risk coverage.

Article II

OBLIGATIONS OF THE UNITED NATIONS

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

2. Costs incurred by United States Personnel undertaking official travel in the discharge of their functions, in so far as not provided by the international civil and security presences deployed under United Nations auspices in Kosovo, shall be paid by the United Nations on the same basis as costs incurred by staff members, including payment of daily or mission subsistence allowance, as applicable.

3. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death of the United States Personnel arising out of or related to the provision of services under this Agreement, except where such illness, injury or death results directly from the gross negligence of the officials or staff of the United Nations. Any amounts payable by the United Nations shall be reduced by amounts of any coverage under the insurance referred to in article I, section 3, of this Agreement.

Article III

OBLIGATIONS OF THE UNITED STATES PERSONNEL

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

(*a*) The United States Personnel shall perform their functions under the authority of, and in full compliance with, the instructions of the Prosecutor of the International Tribunal, and any person acting on his or her behalf;

(*b*) The United States Personnel shall undertake to respect the impartiality and independence of the United Nations and shall neither seek nor accept instructions regarding the services performed under this Agreement from any Government or from any authority external to the International Tribunal;

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

(*d*) The United States Personnel shall comply with all rules, regulations, instructions, procedures or directives issued by the United Nations and the International Tribunal;

(*e*) The United States Personnel shall exercise the utmost discretion in all matters relating to their functions and shall not communicate, at any time, without the authorization of the Prosecutor of the International Tribunal, to the media or to any institution, person, Government or other authority external to the United Nations, any information that has not been made public, and which has become known to them by reason of their association with the United Nations. They shall not use any such information without the written authorization of the Prosecutor of the International Tribunal, and in any event, such information shall not be used for personal gain. These obligations do not lapse upon expiration of this Agreement;

(*f*) The members of the United States Personnel shall sign an undertaking in the form attached to this Agreement in annex II.

Article IV

LEGAL STATUS OF THE UNITED STATES PERSONNEL

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

2. While performing functions for the United Nations, the United States Personnel shall be considered as "experts on mission" within the meaning of article VI, sections 22 and 23, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

Article V

ACCOUNTABILITY

1. Unsatisfactory performance or failure to conform to the standards of conduct set out above may lead to termination of service, for cause, at the initiative of the United Nations. One month's notice shall be given in such cases.

2. Any serious breach of the duties and obligations that, in the view of the Secretary-General, would justify separation before the end of the notice period will be immediately reported to the Government, with a view to obtaining agreement on an immediate cessation of service. The Secretary-General may decide to limit or bar access to United Nations premises by the individual involved when the circumstances so warrant.

3. The Government will reimburse the United Nations for financial loss or for damage to United Nations–owned equipment or property caused by United States Personnel provided by the Government if such loss or damage (*a*) occurred outside

the performance of services with the United Nations, or (*b*) arose or resulted from gross negligence or wilful misconduct or violation or reckless disregard of applicable rules and policies by such United States Personnel.

Article VI

THIRD-PARTY CLAIMS

The United Nations shall be responsible for dealing with claims by third parties where the loss of or damage to their property, or death or personal injury, was caused by the actions or omissions of the United States Personnel in the performance of services to the United Nations under the agreement with the Government. However, if the loss, damage, death or injury arose from gross negligence or wilful misconduct of the United States Personnel provided by the donor, the Government shall be liable to the United Nations for all amounts paid by the United Nations to the claimants and all costs incurred by the United Nations in settling such claims.

Article VII

CONSULTATION

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

Article VIII

SETTLEMENT OF DISPUTES

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

Article IX

ENTRY INTO FORCE, DURATION AND TERMINATION

The Agreement shall enter into force on ..., and shall remain in force for six months unless terminated earlier by either Party upon one month's written notice to the other Party. The Agreement may be extended with the consent of both Parties on the same conditions and for a further agreed period.

Article X

AMENDMENT

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

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

DONE in New York, this 2nd day of July in the year 1999, in two originals in the English language.

For the United Nations:

(*Signed*) Rafiah SALIM
Assistant Secretary-General
Office of Human Resources Management

For the Government of the United States of America:

(*Signed*) Carolyn WILLSON
Acting Legal Adviser
United States Mission to the United Nations

(*m*) Memorandum of Agreement between the United Nations (United Nations Office for Project Services) and the Government of New Zealand. Signed at New York on 6 July 1999[16]

Preamble

Whereas the United Nations General Assembly, in its resolution 53/26, adopted on 17 November 1998, paragraph 2, welcomed "the efforts made by the United Nations to foster the establishment of mine-clearance capacities in countries where mines constitute a serious threat to the safety, health and lives of the local population", also emphasized, in paragraph 7, "the important role of the United Nations in the effective coordination of mine-action activities, including those by regional organizations",

Whereas the United Nations involvement in mine action in Kosovo is more specifically mandated by the Security Council in its resolution 1244 (1999) adopted by the Council on 10 June 1999, which supports the deployment of an international civil presence, the responsibilities of which include "supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid" (para. 11(*h*)) and "assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo" (para. 11(*k*)),

Whereas since the international civil presence in Kosovo will take more time to deploy and become operational than the international security presence, Security Council resolution 1244 (1999) provides for temporary assistance in mine action by the international security presence. Thus, the responsibilities of the international security presence include "supervising demining until the international civil presence can, as appropriate, take over responsibility for this task" (para. 9(*e*)),

Whereas, in this connection, the Government of New Zealand (hereinafter referred to as "the Donor") agreed to make available to the United Nations the services of certain personnel for assignments of limited duration to assist in carrying out the objectives of the United Nations in emergency humanitarian coordination activities,

Whereas the United Nations Mine Action Service has established a project, "Mine Action Programme—Kosovo" (hereinafter referred to as "the Project"), financed through the United Nations Voluntary Trust Fund and executed by the United Nations Office for Project Services (hereinafter referred to as "UNOPS") for establishing a Mine Action Coordination Centre in Kosovo,

Whereas, in support of this project, the Donor has expressed interest to make available to the Project the services of a technical adviser as the Chief of the Mine Action Coordination Centre to support the mine-action activities in Kosovo and to assist in carrying out the objectives of the Project,

Whereas the Donor and UNOPS (hereinafter referred to as "the Parties") wish to ensure the terms and conditions under which the technical adviser shall be deployed,

The Parties agree as follows:

Article I

PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to set forth the terms and conditions under which the Chief of the Mine Action Coordination Centre may be made available by

the Donor to the Project to assist in the mine action activities in the region in and around Kosovo and to assist in carrying out the objectives of the Project. Unless specifically provided otherwise, the terms and conditions of the Agreement shall apply only in the region in and around Kosovo.

Article II

DURATION, AMENDMENT AND TERMINATION

1. This Agreement shall enter into force upon signature and shall apply as from 18 June 1999. Unless otherwise determined by the parties, the Chief of the Mine Action Coordination Centre shall be withdrawn from assignment on 17 December 1999. The Agreement shall expire on the withdrawal of the Chief of the Mine Action Coordination Centre.

2. No modification of or change in this Agreement, waiver of any of its provisions or additional contractual provisions shall be valid or enforceable unless previously approved in writing by the Parties to this Agreement or their duly authorized representatives in the form of an amendment to this Agreement duly signed by the Parties hereto.

3. This Agreement may be terminated by either Party before completion of the Agreement by giving thirty (30) days' written notice to the other Party, and the Donor shall be responsible for all costs associated with repatriating the Chief of the Mine Action Coordination Centre.

Article III

OBLIGATIONS OF THE DONOR

1. The Donor agrees to provide a technical adviser selected in consultation with UNOPS to perform the services of the Chief of the Mine Action Coordination Centre as described in the attached terms of reference (annex A), which forms an integral part of this Agreement. The Chief of the Mine Action Coordination Centre will work under the overall supervision of the UNOPS Mine Action Unit and in consultation with the United Nations Mine Action Service.

2. The Donor shall be responsible for all of the costs associated with providing the services of the Chief of the Mine Action Coordination Centre, including but not limited to salary and national allowances, except for a round-trip airline ticket from New York to Skopje, former Yugoslav Republic of Macedonia, and mission subsistence allowance as described in article VI(8) below.

3. The Donor shall ensure that, during the entire period of service under this Agreement, the Chief of the Mine Action Coordination Centre is a participant in a national health-care scheme and/or is covered by adequate medical and life insurance, and is covered by appropriate arrangements assuring compensation in the case of illness, disability or death. Notwithstanding article VI(6) and (7) below, the Donor shall ensure that the Chief of the Mine Action Coordination Centre is covered by adequate medical and security evacuation insurance. The Donor shall be responsible for any costs related to the provision of the above requirements.

4. The Donor agrees that the Chief of the Mine Action Coordination Centre shall remain for six months in country inclusive of any accumulated leave to perform the services set forth in annex A. Where necessary, the Donor, in consultation with UNOPS, may withdraw the Chief of the Mine Action Coordination Centre for disciplinary, medical, compassionate, administrative or security reasons.

Article IV

OBLIGATIONS OF THE CHIEF OF THE MINE ACTION COORDINATION CENTRE

1. The Donor agrees to the terms and obligations specified below, and shall accordingly ensure that the Chief of the Mine Action Coordination Centre performing services under this Agreement is instructed to comply with these obligations:

(*a*) During the period of his assignment to UNOPS, the Chief of the Mine Action Coordination Centre will be subject to the managerial authority of UNOPS, vested in the Executive Director of UNOPS and responsible to UNOPS in the exercise of his functions. Accordingly, the Executive Director or his designated representative shall have managerial authority over the deployment, organization, conduct and direction of the Chief of the Mine Action Coordination Centre made available under this Agreement. During the period of this Agreement, such authority shall be exercised on behalf of the Executive Director by the Division Chief, UNOPS Mine Action Unit. The Division Chief, UNOPS Mine Action Unit, shall have general responsibility for coordination of all implementation activities under the Project;

(*b*) The Chief of the Mine Action Coordination Centre shall report to the Division Chief, UNOPS Mine Action Unit, on all technical and administrative matters concerning implementation of the Project. Any policy or priority setting decision taken by the United Nations Mine Action Service that has an effect on the implementation of the Project will be communicated first to UNOPS and then to the Chief of the Mine Action Coordination Centre so that UNOPS has the opportunity to amend implementation modalities;

(*c*) During his assignment with UNOPS, the Chief of the Mine Action Coordination Centre shall regulate his conduct with the interests of UNOPS only in view. The Chief of the Mine Action Coordination Centre shall not seek or accept instructions in respect of the performance of his duties from any authority external to UNOPS, except for decisions taken by the United Nations Mine Action Service as described in sub-paragraph (*b*) above, nor shall the Donor give such instructions to him, except on matters pertaining to his personal status as Chief of the Mine Action Coordination Centre;

(*d*) During his assignment with UNOPS, the Chief of the Mine Action Coordination Centre will not engage in any activity that is not compatible with the discharge of his duties with UNOPS. The Chief of the Mine Action Coordination Centre will exercise the utmost discretion in all matters of official business for UNOPS; the Chief of the Mine Action Coordination Centre will not communicate at any time to any other person, Government or authority external to UNOPS any information known to him by reason of his association with UNOPS which has not been made public, except in the course of his duties or by authorization of the UNOPS Executive Director or the Division Chief, UNOPS Mine Action Unit, nor shall he ever use such information for private gain. These obligations do not lapse upon cessation of service with UNOPS;

(*e*) The Donor shall ensure that the Chief of the Mine Action Coordination Centre meets the standards established by UNOPS for service with UNOPS as set forth in annex A, and shall comply with policies and procedures laid down by UNOPS regarding medical or other clearances, vaccinations, travel, shipping, leave or other entitlements. The standards of conduct expected of international civil servants shall be applicable to the Chief of the Mine Action Coordination Centre;

(*f*) The Chief of the Mine Action Coordination Centre shall be responsible to the Division Chief, UNOPS Mine Action Unit, performing the tasks indicated in the terms of reference attached in annex A;

(*g*) The Chief of the Mine Action Coordination Centre shall not engage in actual mine clearance activities other than in a supervisory or emergency assistance capacity. In addition, he is permitted to carry out mine clearance activities to secure safe operation for himself. UNOPS must authorize such activities in advance;

(*h*) The Chief of the Mine Action Coordination Centre will submit at the end of the assignment to the Division Chief, UNOPS Mine Action Unit, a final report on the activities performed during the entire duration of the assignment.

Article V

STATUS OF THE CHIEF OF THE MINE ACTION COORDINATION CENTRE

1. The Chief of the Mine Action Coordination Centre shall not be considered in any respect as being an official or a staff member of UNOPS or the United Nations. He shall have the status of an expert on mission in accordance with article VI, section 22, of the 1946 Convention on the Privileges and Immunities of the United Nations.

2. UNOPS shall take necessary steps to ensure that the appropriate Governments are aware of and respect the status accorded Chief of the Mine Action Coordination Centre under the Convention and shall issue the Chief of the Mine Action Coordination Centre an identity certificate as provided for in article VII, section 26, thereof.

3. The Chief of the Mine Action Coordination Centre shall benefit from all privileges and immunities of being an expert on mission for the United Nations, including immunity from personal arrest, subject to the right and duty of the Secretary-General of the United Nations to waive immunity where such immunity otherwise would impede the course of justice and can be waived without prejudice to the successful completion of the Project or to the interests of UNOPS or the United Nations.

Article VI

OBLIGATIONS OF THE UNITED NATIONS OFFICE FOR PROJECT SERVICES

1. UNOPS shall provide the Chief of the Mine Action Coordination Centre sufficient office space, access to telephone and facsimile, radios to maintain contact with deployed personnel and sets of maps pertaining to areas of operations.

2. UNOPS shall provide sufficient specialized or support equipment required by the Chief of the Mine Action Coordination Centre for the performance of his functions.

3. UNOPS shall provide the Chief of the Mine Action Coordination Centre with transport within the region reasonably necessary for the performance of his operational functions and shall be responsible for the provision of the necessary funds for the maintenance of all project vehicles.

4. The Chief of the Mine Action Coordination Centre shall be entitled to the same security while on official duty, including while travelling in the course of his duties, as other United Nations personnel. UNOPS shall advise the Special

Representative of the Secretary-General or his designated representative of the name of the Chief of the Mine Action Coordination Centre that may be assigned pursuant to the Agreement for this purpose.

5. UNOPS shall keep the Donor informed of the activities and proposed activities involving the Chief of the Mine Action Coordination Centre and, in particular, of any circumstance which may lead to a requirement for medical or security evacuation of the Chief of the Mine Action Coordination Centre.

6. UNOPS shall be responsible for providing casualty evacuation in-country to the Chief of the Mine Action Coordination Centre in case of injury during the course of performing his duties and medical evacuation to a proper medical facility in the region in case of injury or illness. Any medical evacuations from a third country will be borne by the Donor.

7. UNOPS undertakes no responsibilities in respect of life, health, accident, travel or any other insurance coverage for any person which may be necessary or desirable for the purpose of this Agreement or for any personnel performing services under this Agreement. Such responsibilities shall be bore by the Donor.

8. UNOPS shall pay daily subsistence allowance in New York and mission subsistence allowance established at the United Nations rate on a monthly basis in Kosovo to the Chief of the Mine Action Coordination Centre. In the event that the Project provides accommodation to the Chief of the Mine Action Coordination Centre, the mission subsistence allowance shall be adjusted in accordance with United Nations rules and regulations. In addition, UNOPS shall provide a round-trip airline ticket from New York to Skopje, former Yugoslav Republic of Macedonia.

Article VII

CONSULTATION

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

Article VIII

ADMINISTRATIVE MATTERS

Correspondence with the Chief of the Mine Action Coordination Centre on all administrative arrangements connected with assignment and travel, both prior to departure for the mission area and after completion of assignment with UNOPS, will be conducted by UNOPS headquarters in New York. During assignment in the mission area, the Chief of the Mine Action Coordination Centre shall deal through the Division Chief, UNOPS Mine Action Unit, on all administrative matters resulting from his assignment.

Article IX

DUTY SCHEDULE AND LEAVE

1. *Hours of duty*

Hours of duty are determined by the tasks to be performed and the situation in the area. Working hours may be irregular and longer than standard under normal conditions, especially during the formative stages of the mission or during periods of peak activity.

2. *Leave*

Leave credits are accrued at the rate of 2.5 days per month of completed service. UNOPS is not responsible for other travel costs in association with leave. The following general conditions apply to the granting of leave:

(*a*) Leave may not be taken before it is earned;

(*b*) All arrangements for leave are subject to the exigencies of services, and must be approved in advance by UNOPS;

(*c*) Unauthorized absence, except for reasons beyond the individual's control, will be charged to accrued leaved;

(*d*) During the final month of service, no more than 12 days of leave may be approved.

3. *Sick leave*

All absence from duty for medical reasons shall be immediately reported to the supervising UNOPS officer.

Article X

NOTIFICATION OF WITHDRAWAL

1. The Donor shall not withdraw its Chief of the Mine Action Coordination Centre from UNOPS without giving reasonable prior notification to the UNOPS Executive Director.

2. Should the UNOPS Executive Director decide to reduce the numbers of personnel required for UNOPS field activities, he shall give reasonable prior written notification to the Donor.

3. Should the Donor or UNOPS wish to terminate the assignment of the Chief of the Mine Action Coordination Centre during the course of the assignment, repatriation will be promptly effected and the costs borne by the Donor.

Article XI

GENERAL PROVISIONS

1. This Agreement and the annexes attached hereto shall form the entire Agreement between the Donor and UNOPS, superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Agreement.

2. The rights and obligations of the Donor and the Chief of the Mine Action Coordination Centre are limited to the terms and conditions of this Agreement. Accordingly, the Donor and the Chief of the Mine Action Coordination Centre performing services on its behalf shall not be entitled to any benefit, payment, compensation or entitlement except as expressly provided in this Agreement.

3. The Parties agree to waive any claims against each other as related to injury of personnel or damage to goods and equipment, unless such injury or damage is a result of gross negligence or wilful misconduct. UNOPS shall further hold harmless the Donor for any third-party claims that may arise in the course of the performance of the Chief of the Mine Action Coordination Centre's official duties under this Agreement, including words spoken or written and acts done by them; however, the Donor shall accept responsibility for any third-party claims arising from gross neg-

ligence or wilful misconduct of the Chief of the Mine Action Coordination Centre outside his official duties.

4. Any controversy or claim arising out of or in accordance with this Agreement or any breach thereof shall, unless it is settled by direct negotiation, be settled in accordance with the UNCITRAL Arbitration Rules as at present in force. Where, in the course of such direct negotiation referred to above, the Parties wish to seek an amicable settlement of such dispute, controversy or claim by conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules as at present in force. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy or claim.

5. Nothing in or relating to this Agreement shall be deemed a waiver of any privileges and immunities of the United Nations or UNOPS.

IN WITNESS WHEREOF, the undersigned, duly appointed representatives of UNOPS and of the Donor, respectively, have on behalf of UNOPS and the Donor signed the present Memorandum of Agreement on the dates indicated below their respective signatures.

On behalf of the Government of New Zealand:	*UNOPS, as represented by:*
(*Signed*) Trevor HUGHES	(*Signed*) Reinhart HELMKE
Acting Permanent Representative of New Zealand to the United Nations	*Executive Director*
New York	Date: 6 July 1999

ANNEX A

Terms of reference for the Chief of the Mine Action Coordination Centre in Kosovo

The Chief of the Mine Action Coordination Centre will be responsible for all personnel, equipment and operations of the Mine Action Coordination Centre. He will direct and supervise the work of all staff of the Centre at headquarters and in the regional offices. The Chief of the Mine Action Coordination Centre will work under the overall supervision of the UNOPS Mine Action Unit, who will consult regularly with the United Nations Mine Action Service for policy and operational guidance, and shall consult closely with the staff of the appropriate authorities (whether governmental or international), as appropriate.

While the technical supervision and administration of the Consultant will be a UNOPS responsibility, the United Nations Mine Action Service retains overall ownership for the project and will be responsible for:

(*a*) Policy formulation and programme guidance;

(*b*) Priority setting vis-à-vis programme objective.

This responsibility will be carried out in a coordinated fashion. The Consultant will provide monthly reports simultaneously to both agencies and will receive direction that has been coordinated by and agreed to by both agencies. Any policy or priority setting decision taken by the United Nations Mine Action Service that has an effect on the implementation of the project will be communicated first to UNOPS and then to the Consultant so that UNOPS has the opportunity to amend implementation modalities.

He will also report on a regular basis on the progress of the project to the Special Representative of the Secretary-General or to the Deputy Special Representative of the Secretary-General for Humanitarian Affairs.

More specifically, he will be responsible for the following:

1. The Chief of the Mine Action Coordination Centre will develop a humanitarian emergency mine/UXO clearance plan in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations, and United Nations agencies and will advise on all aspects of a comprehensive emergency mine/UXO action programme, including coordination, mine/UXO clearance, mine/UXO survey, mine/UXO-field marking and mine/UXO awareness-training. In the future he will advise and assist the Government in the establishment of a national entity responsible for mine/UXO clearing activities in country (Province).

2. The Chief of the Mine Action Coordination Centre will establish coordination mechanisms and maintain relationships with the North Atlantic Treaty Organization (NATO) and all organizations charged with mine/UXO-related issues in his mission area and will provide advice on all demining matters to those organizations.

3. With the assistance of Mine Information Officer, two Information Management System for Mine Action (IMSMA) Assistants (data entry clerks) and the staff of two regional offices, he will establish a database and master mine/UXO map of Kosovo Province, and will actively seek the information necessary for this database. He will act as the point of contact for United Nations agencies and non-governmental organizations seeking information on the mine/UXO situation in any location of the province.

4. The Chief of the Mine Action Coordination Centre will in the future assist the Government in raising funds for mine/UXO-related activities.

5. He will be assisted in his duties by a Liaison Officer to NATO, a Chief Operations Officer, a Chief Mine Information Officer, a Quality Assurance Officer, a Mine Awareness Officer, a Chief Administrative Officer, an Administrative Assistant, an Office Manager, a Finance Assistant, a Logistics Assistant, two IMSMA Assistants (data entry clerks), a Quality Assurance (QA) Assistant, a Mine Awareness Assistant, an OPS Assistant and two Driver/Interpreters at the Mine Action Coordination Centre headquarters, and by a Regional Mine Officer (Regional Cell Manager), a Deputy Regional Mine Officer, a Regional IMSMA Assistant, a Regional QA Assistant, a Regional Administrative Assistant, and a Driver/Interpreter in each of the two regional offices. He will ensure that United Nations policy and procedures are adhered to by himself and all staff members.

6. The Chief of the Mine Action Coordination Centre will be responsible for maintaining the operations of the Centre within manpower and budgetary limits. He will provide such budgetary estimates as are required and operate within any financial restraints.

7. The Chief of the Mine Action Coordination Centre will carry out other tasks as directed by the UNOPS Mine Action Unit.

Qualifications

— Proven experience in the management of a major demining battle area clearance project

— Practical hands-on experience in demining and explosive ordnance disposal in post-conflict situations

— Thorough knowledge of demining and explosive ordnance equipment

— Fluency in English, sound working knowledge of Serbian/Albanian (desirable)

— Computer literacy

— Experience in mixed-nationality workforces

— Sound technical and mechanical background

— Military experience preferred. If not, candidate should be self-reliant and able to work independently

— Good health

Duration of tenure: six months.

(*n*) Agreement between the United Nations and the Czech Republic on the United Nations information centre in Prague. Signed at Prague on 16 July 1999[17]

The Czech Republic and the United Nations,

Considering that the Government of the Czech Republic undertakes to assist the United Nations in securing all the necessary facilities for its functioning under the terms of paragraph 3 of General Assembly resolution 1405 (XIV) of 1 December 1959, by which the Secretary-General was requested to enlist the cooperation of the Member States concerned in providing all possible facilities for the establishment of such centres and in assisting actively in efforts to promote wider public understanding of the aims and activities of the United Nations,

Considering that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 applies to the field offices of the Department of Public Information, which are hence an integral part of the Secretariat of the United Nations,

Considering that it is desirable to conclude an agreement to regulate questions arising as a result of the presence of the United Nations information centre in Prague (hereinafter referred to as "the Centre"),

Have agreed as follows:

Article I

DEFINITIONS

For the purposes of the present Agreement:

(*a*) The expression "officials of the Centre" means the Director and all members of the staff of the Centre, with the exception of those who are recruited locally and assigned to hourly rates;

(*b*) The expression "premises of the Centre" means the offices used for the official purposes of the Centre;

(*c*) The expression "the Government" means the Government of the Czech Republic;

(*d*) The expression "laws of the Czech Republic" includes:

(i) The Constitution of the Czech Republic;

(ii) The legislative acts, regulations and orders issued by or under authority of the Government or appropriate Czech authorities;

(*e*) The expression "appropriate Czech authorities" means government, municipal or other authorities in the Czech Republic operating in accordance with the legislation of the Czech Republic;

(*f*) The expression "the Convention" means the 1946 Convention on the Privileges and Immunities of the United Nations;

(*g*) The expression "the Secretary-General" means the Secretary-General of the United Nations.

Article II

FUNCTIONS OF THE CENTRE

The United Nations information centre in Prague carries out the functions assigned to it by the Secretary-General within the framework of the Department of Public Information of the United Nations Secretariat.

Article III

STATUS OF THE PREMISES OF THE CENTRE

1. The Convention shall be applicable to the premises of the Centre. The premises of the Centre and the residence of the Director shall be inviolable. No officer or official of the appropriate Czech authorities shall enter the premises of the Centre or the residence of the Director to perform any official duties therein except with the consent of and under conditions determined by the Director.

2. Without prejudice to the provisions of the Convention, the Centre shall seek to prevent its premises from being misused as a refuge by persons who are avoiding prosecution under any law of the Czech Republic, who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process.

3. The appropriate Czech authorities shall exercise due diligence to ensure the security and protection of the premises of the Centre.

Article IV

FACILITIES AND SERVICES

1. The Government undertakes to support the United Nations in securing and maintaining adequate premises and facilities for the Centre.

2. The Government shall provide an annual financial contribution to cover part of the Centre's cost. For 1999, the contribution is set at 750,000 koruny; the precise amount for the following years will be determined in consultation between the Parties to this Agreement.

3. The appropriate Czech authorities shall ensure that the Centre is supplied with the necessary public services and that such public services shall be supplied on equitable terms.

Article V

COMMUNICATION FACILITIES

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

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

Article VI

OFFICIALS OF THE CENTRE

1. Officials of the Centre shall:

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

notwithstanding that the persons concerned may have ceased to be officials of the United Nations;

(*b*) Be immune from inspection and seizure of their official baggage, and if the person is the Director of the Centre, be immune from inspection of personal baggage unless there are serious grounds for presuming that it contains articles the import and export of which is prohibited by law or controlled by the quarantine regulations of the Czech Republic;

(*c*) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(*d*) Be exempt from national service obligations;

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

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

(*g*) Have the freedom to acquire as well as maintain within the Czech Republic or elsewhere, foreign currency accounts as well as foreign securities and the right to take these funds and securities out of the Czech Republic through authorized channels without prohibition or restriction;

(*h*) Have the right to import their furniture and effects in one or more separate shipments, during the first year from their date of arrival, including two automobiles and, in case of officials accompanied by their dependants, three automobiles.

2. Officials of the Centre, except those who are Czech nationals or who have permanent resident status in the Czech Republic, shall furthermore have the right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

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

They shall further:

(*b*) Be exempt from any form of taxation on income derived by them from sources outside the Czech Republic;

(*c*) Be exempt from taxes and duties in accordance with Czech laws relating to diplomatic missions accredited to the Czech Republic.

3. The Director of the Centre, in addition to the privileges and immunities specified above, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities normally accorded to heads of diplomatic missions. The name of the Director shall be included in the diplomatic list issued by the Ministry of Foreign Affairs of the Czech Republic.

4. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations regulations and rules, including those covering health and social security schemes.

5. The privileges and immunities under this Agreement are granted solely for the purpose of carrying out effectively the aims and purposes of the United Nations. The Secretary-General shall have the right and the duty to waive the immunity of any staff member whenever in his opinion such immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

Article VII

COOPERATION WITH THE HOST COUNTRY

1. Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Czech Republic.

2. Should the Government consider that an abuse of a privilege or immunity conferred by the Agreement has occurred, the Director shall, upon request, consult with the appropriate Czech authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Government and to the United Nations, the matter shall be determined in accordance with the procedures set out in article VIII on settlement of disputes.

Article VIII

SETTLEMENT OF DISPUTES

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

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

(*b*) Disputes involving any official of the Centre who by reason of his official position enjoys immunity, if such immunity has not been waived by the Secretary-General.

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

3. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Government or the Secretary-General.

Article IX

GENERAL PROVISIONS

1. This Agreement shall be construed in the light of its primary purpose of enabling the Centre fully and efficiently to discharge its responsibilities and fulfil its purposes.

2. Consultations with respect to modifications of this Agreement shall be entered into at the request of the Government or the United Nations. Any such modification shall be made by mutual consent.

3. This Agreement shall cease to be in force if the Centre is removed from Czech territory, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Centre in Prague and the disposal of its property therein.

4. This Agreement is subject to approval in conformity with the internal legal regulations valid in the Czech Republic and shall come into force on the day of notification of the approval.

IN WITNESS THEREOF, the undersigned, duly authorized representatives of the Czech Republic and the United Nations, have signed the present Agreement.

DONE at Prague, on 16 July 1999, in two originals in the English language.

For the United Nations:	*For the Czech Republic*:
(*Signed*) Kofi A. ANNAN	(Signed) Jan KAVAN
Secretary-General	*Minister of Foreign Affairs*

(*o*) Memorandum of Understanding between the United Nations and the Federal Government of Austria on the enforcement of sentences of the International Tribunal for the Former Yugoslavia. Signed at Vienna on 23 July 1999[18]

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

The Federal Government of Austria, hereinafter called "the requested State",

Recalling article 27 of the Statute of the International Tribunal adopted by the Security Council in its 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,

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 Federal Government of Austria 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 requested State 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 or her further treatment in the requested State and any other factor relevant to the enforcement of the sentence.

3. The requested State 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 to 4 of article 9 below.

3. The conditions of imprisonment shall be equivalent to those applicable to prisoners serving sentences under Austrian law and shall be in accordance with relevant human rights standards.

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 or her transfer, the convicted person will be informed by the Registrar of the contents of this Agreement.

Article 5

RULE OF SPECIALTY

1. A convicted person transferred to the requested State pursuant to the terms of this Agreement shall not be prosecuted or proceeded against in the requested State for any act or conduct committed prior to his or her transfer to the requested State, unless:

(*a*) The convicted person stays on the territory of the requested State for more than 45 days after his or her release, despite the fact that he or she could leave the requested State; or

(*b*) The convicted person leaves the requested State and:

(i) Returns voluntarily, or

(ii) Is lawfully brought back by another State.

2. The provisions of this article are without prejudice to article 10 of the Statute of the International Tribunal.

Article 6

MONITORING

1. The competent authorities of the requested State shall allow visits of the prisoner(s) by the International Tribunal, or an entity designated by it, in accord-

ance with article 27 of the Statute of the International Tribunal and, subject to the Statute, with Austrian law. The competent authorities shall allow visits at any time and on a periodic basis, the frequency of visits to be determined by the International Tribunal. Reports on the conditions of detention and the treatment of the prisoner(s), based on the findings of the visits, will be issued, as appropriate.

2. The requested State 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 requested State to report to him or her any changes in the conditions of detention suggested in the reports.

Article 7

INFORMATION

1. The requested State 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 requested State shall consult each other on all matters relating to the enforcement of the sentence upon the request of either Party.

Article 8

EARLY RELEASE, PARDON AND COMMUTATION OF SENTENCES

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

2. The requested State shall inform the Registrar of all circumstances pertaining to the eligibility for early release, pardon or commutation of the sentence.

3. The President of the International Tribunal shall determine, in consultation with the judges of the International Tribunal, whether any early release, pardon or commutation of the sentence is appropriate. The Registrar shall inform the requested State of the President's determination. If the President determines that an early release, pardon or commutation of the sentence is not appropriate, the requested State 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.

4. The provisions of this Agreement shall be without prejudice to the right of the requested State to deport the convicted person after the completion of his or her sentence enforced pursuant to this Agreement, unless the International Tribunal notifies the requested State of the willingness of another State to accept the convicted person.

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 requested State 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 30 days after signature.

Article 13

DURATION OF THE AGREEMENT

1. 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.

2. Notwithstanding paragraph 1 of this article, this Agreement shall be applicable as long as the requested State has notified its willingness to enforce sentences of the International Tribunal in accordance with article 27 of the Statute of the International Tribunal.

3. Articles 3 and 5 to 11 shall remain applicable as long as sentences of the International Tribunal are being enforced by the requested State under the terms and conditions of this Agreement.

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

DONE at Vienna this twenty-third day of July 1999, in duplicate, in the English language.

For the United Nations:
(*Signed*) Dorothee de SAMPAYO GARRIDO-NIJGH
Registrar
International Tribunal
for the Former Yugoslavia

For the Federal Government of Austria:
(*Signed*) Benita FERRERO-WALDNER
State Secretary
Federal Ministry for Foreign Affairs

(*p*) Exchange of letters constituting an agreement concerning arrangements between the United Nations and the Government of the Federal Republic of Germany regarding the Seminar on the Prevention of Chemical Accidents and Limitation of their Impact on Transboundary Waters, organized under the auspices of the Economic Commission for Europe, the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and the Meeting of Signatories to the Convention on the Transboundary Effects of Industrial Accidents, held in Hamburg from 4 to 6 October 1999. Signed at Geneva on 2 and 24 August 1999[19]

I

LETTERS FROM THE UNITED NATIONS OFFICE AT GENEVA

2 August 1999

Sir,

I have the honour to give you below the text of arrangements between the United Nations and the Government of the Federal Republic of Germany (hereinafter referred to as "the Government") in connection with the Seminar on the Prevention of Chemical Accidents and Limitation of their Impact on Transboundary Waters, organized under the auspices of the Economic Commission for Europe, the Meeting of Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and the Meeting of Signatories to the Convention on the Transboundary Effects of Industrial Accidents, to be held, at the invitation of the Government, in Hamburg from 4 to 6 October 1999.

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

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

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

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

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

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

4. The Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (*a*) injury to person or damage to property in conference or office premises provided for the Seminar; (*b*) the transportation provided by the Government; and (*c*) the employment for the Seminar of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except in cases of gross negligence or wilful misconduct of these officials and persons.

5. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which the Federal Republic of Germany is a party, shall be applicable to the Seminar.

(*a*) Accordingly, officials of the United Nations performing functions in connection with this Seminar shall enjoy the privileges and immunities provided under articles V and VII of the said Convention.

(*b*) Participants attending this Seminar in pursuance of paragraph 1 of this Agreement shall enjoy the privileges and immunities of experts on mission under articles VI and VII of the Convention on the Privileges and Immunities of the United Nations.

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

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

(*e*) A list with the names and professional functions of all participants in this Seminar indicating their status will be communicated to the host authorities by the Secretariat at the earliest possible opportunity.

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

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

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

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

* * *

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

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

II

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

24 August 1999

Mr. Director-General,

I have the honour to acknowledge receipt of your letter of 2 August 1999 concerning the arrangements between the United Nations and the Government of the Federal Republic of Germany regarding the Seminar on the Prevention of Chemical Accidents and Limitation of their Impact on Transboundary Waters, organized under the auspices of the Economic Commission for Europe, the Meeting of Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and the Meeting of Signatories to the Convention on the Transboundary Effects of Industrial Accidents, to be held in Hamburg from 4 to 6 October 1999.

I am pleased to confirm that the conditions listed in your letter are acceptable to the Government of the Federal Republic of Germany.

It is the understanding of the Government of the Federal Republic of Germany that the term "participants" within the meaning of paragraph 5 (*b*) of the Agreement designates persons who are experts on mission under article VI of the Convention and who are formally notified as such.

As regards the term "privileges and immunities" in paragraph 5 (*c*) of the Agreement, the Government of the Federal Republic of Germany understands that all privileges and immunities with respect to the session have been dealt with exclusively under paragraphs 5 (*a*) and (*b*).

(*Signed*) Holger EBERLE
Minister
Chargé d'affaires a.i.

(*q*) Agreement between the United Nations and the International Tribunal for the Former Yugoslavia regarding the Detention Unit services and facilities. Signed at The Hague on 25 August and 11 September 1999[20, *]

This Detention Unit Services and Facilities Agreement ("the Agreement") is made this twenty-fifth day of August 1999 by and between the United Nations, an international intergovernmental organization, represented in this matter by the Registrar of the International Tribunal for the Former Yugoslavia ("the Tribunal") and the State of The Netherlands ("the State"), represented in this matter by the Director-General of the Division of Public Law Enforcement of the Ministry of Justice.

Witnesseth:

Whereas the United Nations and the State concluded an Agreement concerning the headquarters of the Tribunal on 29 July 1994,

Whereas the State and the United Nations are signatories of a lease contract of 14 July 1994, amended on 7 January 1999, for the lease ("the Detention Unit Lease") of a detention unit complex ("the Detention Unit") on the premises of the State's Penitentiary Complex Scheveningen ("the Penitentiary Complex") located at Pompstationsweg, Scheveningen, for the detention of persons awaiting trial before the Tribunal,

Whereas the Tribunal and the State are parties to the Agreement on Security and Order signed on 14 July 1994,

Whereas the Tribunal has promulgated Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Rules of Detention"), as attached hereto as annex A, and Rules and Regulations relating to the Detention Unit, including Regulations for the Establishment of a Complaints Procedure for Detainees ("Complaints Procedure"), as attached hereto as annex B, Regulations for the Establishment of a Disciplinary Procedure for Detainees ("Disciplinary Procedures"), as attached hereto as annex C, the House Rules for Detainees ("House Rules"), as attached hereto as annex D, and the Regulations to Govern the Supervision of Visits to and Communications with Detainees ("Supervision Regulations"), as attached hereto as annex E, which Rules of Detention and Rules and Regulations relating to the Detention Unit establish certain rights for individuals detained in the Detention Unit,

Whereas the State has promulgated a programme of services and facilities to be provided for the incarceration of detainees and prisoners in the Dutch Prison Service ("the BIBA Programme"),

Whereas the State desires to offer the use of a comprehensive, cost-efficient programme for the service, maintenance and guarding of the Detention Unit and for the care of persons awaiting trial on the terms and conditions stated hereinafter,

Whereas it is the aim of the United Nations to fully satisfy the requirements of the security and welfare of the detainees and to establish the regime that most adequately serves this purpose, on the terms and conditions stated hereinafter,

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* Annexes are not published herein. See United Nations Treaty Series, vol. 2085, p. 175.

Whereas it is the desire of the United Nations to obtain the use of the services and facilities contained in the programme designed by the State to address the needs of detainees assigned to the Detention Unit,

Now, therefore, in consideration of the mutual promises and covenants hereinafter contained, the Parties hereto mutually agree as follows:

1. *Provision of services and facilities*

1.1 The State hereby agrees to provide to the United Nations the services and facilities related to the Detention Unit ("the Services") which are described herein.

1.2 The Services shall include the services and facilities provided under the Dutch Prison Service's 1999 BIBA Programme, described in annex F, to be performed in accordance with the standards, levels and performance indicators set forth in annex G, provided that the provisions relating to prison labour under section 2.4 of annex G are excluded.

1.3 The Services shall be provided subject to any modifications as deemed appropriate by the United Nations. In particular, the following adaptations and additions shall apply to medical services (in accordance with article 2 of this Agreement), meals (article 3), Prison Guard services (article 4), cleaning and maintenance of the Detention Unit (article 5), and personnel providing services (article 6). In the event of any conflict or inconsistency between the description of the services and facilities in annex G and the adaptations made in this Agreement, the latter shall prevail.

1.4 The Services provided by the State to the United Nations under this Agreement shall be provided in accordance with the relevant provisions of the Rules of Detention and the Rules and Regulations relating to the Detention Unit.

1.5 The State shall not make any additional charge to the United Nations for any of the Services except as provided in this Agreement.

2. *Medical services*

2.0 The State shall provide medical services, as set out hereinbelow, for each detainee resident in the Detention Unit ("Unit detainee").

2.1 *Medical services provided by the Medical Officer*

2.1.1 The Detention Unit Medical Officer ("the Medical Officer") shall provide the following medical services to Unit detainees:

(*a*) A physical check-up on each Unit detainee upon arrival and follow-up medical examinations, as needed;

(*b*) Primary medical health care, which includes all medical treatment within the competence of a general medical practitioner;

(*c*) Consultations to and treatment of the Unit detainees at all times according to their actual medical needs;

(*d*) Treatment for Unit detainees at the Penitentiary Complex hospital located on the premises of the Penitentiary Complex, including nursing care by the Penitentiary Complex hospital staff and medical care by Penitentiary Complex medical doctors. Such treatment shall be ordered by the Medical Officer, or in his absence, his substitute and shall also include treatment, as appropriate, in the Penitentiary Complex hospital emergency room, operating theatre, hospital beds and other hospital facilities;

(*e*) Referral to an appropriate medical specialist and/or civil hospital outside the Penitentiary Complex hospital in the event that a Unit detainee requires medical treatment which cannot be provided by the Medical Officer, or which cannot be provided at the Penitentiary Complex hospital in accordance with articles 2.1 and 2.2 of this Agreement. When such a referral is made, the Tribunal shall be responsible for the costs of such specialist treatment and hospitalization outside the Penitentiary Complex.

2.1.2 The State shall provide and maintain a primary health-care clinic on the premises of the Detention Unit, which shall be operated under the authority of the Medical Officer, for the provision of the Services set out herein, including the provision of medications and medical supplies.

2.2 *Medical services provided by Penitentiary Complex staff*

2.2.1 In cases in which Unit detainees have illnesses or injuries which can be treated in the Detention Unit, Penitentiary Complex staff shall provide appropriate Medical services including:

(*a*) Mental health care for Unit detainees, for purposes of assessments, diagnosis and referral as appropriate in cooperation with the Dutch Prison Services District Psychiatric Service. Following initial assessment, diagnosis and referral for appropriate treatment, the Tribunal shall be responsible for the costs of additional psychiatric or psychological services;

(*b*) Dental health-care services currently available at the Penitentiary Complex hospital. In cases where the necessary dental care/service is not offered at the Penitentiary Complex hospital, the Tribunal shall be responsible for the costs of such care/services;

(*c*) Medical supplies and medicines, which are available without prescription.

2.3 *Emergencies*

2.3.1 The State shall ensure that a qualified medical doctor shall be available and reachable immediately at all times for the attention of medical emergencies of Unit detainees, upon request of the Detention Unit Commanding Officer or the shift supervisor of the Detention Unit.

2.4 *Qualification of medical staff*

2.4.1 All medical services provided by the State shall be delivered by medical doctors, nurses and other medical staff who possess the medical qualifications and skills necessary to provide appropriate medical care and services.

2.5 *Medical records*

2.5.1 The medical records of Unit detainees shall be maintained by the Medical Officer for use as appropriate. All medical records, reports, notes, x-rays, tests and diagnostic data and other materials relating to the medical care and treatment of Unit detainees prepared by personnel or facilities provided or made available by the Government under this Agreement shall be the property of the Tribunal. As such, they shall be treated as confidential and be turned over to the Tribunal upon request.

2.6 *Appointment, duties and responsibilities of the Medical Officer*

2.6.1 The Medical Officer shall, in accordance with the Rules of Detention, be appointed by agreement between the Registrar and the General Director of the host prison. The Medical Officer shall be a general practitioner qualified to practice in The Netherlands and shall exercise his functions under this Agreement under the overall authority of the Registrar of the Tribunal and in accordance with the Rules of Detention and the Rules and Regulations relating to the Detention Unit.

3. *Meals*

3.1 The State shall provide three (3) meals a day for Unit detainees. These meals shall consist of balanced diets, regularly including fruits and vegetables, and be of a nutritional standard appropriate for each of the Unit detainees, as established by a qualified Penitentiary Complex staff nutritionist.

3.2 The State shall provide dietary food on prescription, if available in the Penitentiary Complex kitchen facilities.

4. *Prison guard services*

4.1 The State shall, on request, provide to the United Nations such trained penitentiary personnel to serve as prison guards and officers in the Detention Unit ("Prison Guards") in accordance with the provisions of this article.

4.2 The initial number of Prison Guards loaned by the State to the United Nations shall be thirty-six (36). The United Nations may, at any time, request that the number of Prison Guards be decreased to thirty (30) or increased to forty-five (45); thereafter, the United Nations may, at any time, request that the number of Prison Guards be increased or decreased to forty-five (45), to thirty-six (36) or to thirty (30) guards as the case may be. The State shall comply with all such requests within two (2) months of the date of the request, in accordance with the provisions of this article.

4.3 The initial Prison Guards are identified on annex H. In the event of an increase of Prison Guards or for the filling of vacancies of Prison Guards, the Director-General of the Penitentiary Complex shall nominate candidates and make such candidates and their records available for interview or review by the United Nations. The United Nations may accept or reject any candidacy without giving any reasons.

4.4 The Prison Guards shall not be considered as staff members of the United Nations. They shall, however, be subject to the authority of the Registrar of the Tribunal and shall perform their duties under the direction and control of the Commanding Officer of the Detention Unit, in accordance with the Rules of Detention and the Rules and Regulations relating to the Detention Unit.

4.5 The Prison Guards shall not seek or accept instructions from any Government or from any other authority external to the United Nations, nor shall they communicate at any time any information which has become known to them as a result of their service to the United Nations. Each Prison Guard shall sign on the first day of duty an undertaking in the form attached hereto as annex I.

4.6 The primary place of duty for the Prison Guards shall be the Detention Unit. However, they shall also assist, in any other duties which are requested of

them by the Registrar or her designee with the approval of the Director-General of the Penitentiary Complex, which approval shall not be unreasonably withheld.

4.7 The United Nations may at any time request the transfer of a Prison Guard back to the responsibility of the State without giving any reason. The vacancy shall be filled within a reasonable time.

5. *Cleaning and maintenance of the Detention Unit*

5.1 The State shall, or shall arrange for a contractor satisfactory to the Tribunal to, maintain and clean all areas of the Detention Unit, except for custodial areas, on a daily basis, to the cleanliness standards maintained in the Penitentiary Complex as a whole. Such cleaning services shall be provided, in case of emergency, on request.

5.2 The State shall provide to the Tribunal the cleaning materials necessary for the maintenance and cleaning (to the standard referred to above) of the custodial areas of the Detention Unit.

6. *Personnel providing services*

6.1 The State shall inform the United Nations of the names and details of proposed personnel (whether employed by the State or by a third party), who will provide the Services described under articles 2, 3, 4 and 5 or any other services under this Agreement. The United Nations may at any time reject the entry by any person onto the premises of the Detention Unit without giving any reasons; in such case, the State shall promptly make other arrangements for the provision of the Services provided for hereunder.

7. *Costs and payments*

7.1 The State shall be responsible for all costs and obligations relating to the provision of the Services provided hereunder, including, but not limited to, all salaries, overtime, insurances, benefits, payments or the like relating to the Services provided under this Agreement.

7.2 The United Nations shall pay for the Services provided for herein based on a per cell per day price, as determined in accordance with paragraph 7.4 below. The number of Detention Unit cells leased by the United Nations pursuant to the Detention Unit Lease, which is currently thirty-six (36), shall be multiplied by the cell per day price, which shall be determined in accordance with paragraph 7.4 below, to determine the total daily amount to be paid by the United Nations for the Services.

7.3 The per cell per day price shall be determined by reference to the prices established in the table below, which vary in accordance with the number of Prison Guards provided to the United Nations pursuant to article 4 of this Agreement.

Number of Prison Guards	*Price per Detention Unit cell per day* (*in Netherlands guilders*)	*Total daily price (based on 36 cells leased)* (*in Netherlands guilders*)
Thirty (30)	343.94	36 x 343.94 = 12,381.84
Thirty-six (36)	379.81	36 x 379.81 = 13,673.16
Forty-five (45)	404.30	36 x 404.30 = 14,554.80

7.4 Payment shall be made on a quarterly basis in arrears, upon receipt and verification of the invoices no later than fifteen (15) days after the end of the calendar quarter to which the payment relates. The invoice shall reflect changes in Prison Guard staffing levels affecting price per Detention Unit cell per day, as well as any change in the number of detention cells leased by the United Nations.

8. *Scope of services*

8.1 Regardless of the number of Unit detainees or the number of Prison Guards, all of the Services provided by the State to the United Nations under this Agreement other than Prison Guard services shall remain at a constant level and may be modified only with the explicit agreement of the Tribunal.

9. *Indemnification*

9.1 *Medical Officer*

9.1.1 (*a*) In case of claims by Unit detainees or other third parties for acts or omissions falling within his competence as a medical practitioner, the Medical Officer shall be responsible for such claims. To this extent, the State shall ensure that the Medical Officer will be adequately covered by liability insurance for any claim for personal injury, loss, illness or death or loss of or damage to property for any act or omission by the Medical Officer under the Agreement. The State shall submit proof of such insurance satisfactory to the Tribunal before the Medical Officer commences work under the Agreement.

9.1.1 (*b*) In cases where no such insurance is provided, for whatever reason, or in cases where such insurance is insufficient, the State shall be responsible.

9.1.2 Notwithstanding article 9.1.1 above, in cases where a claim results from direct instructions by a United Nations official, acting in his official capacity and within the limits of his authority, the United Nations shall be responsible to the extent that such a claim was the direct result of such instructions.

9.1.3 Subject to the provisions of articles 9.1.1 and 9.1.2 above, the State shall be responsible for all other claims by Unit detainees or other third parties resulting from the acts or omissions of the Medical Officer under this Agreement and shall indemnify, hold and save harmless, and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses.

9.2 *Medical services by Penitentiary Complex staff*

9.2.1 The State shall be responsible for all claims by Unit detainees or other third parties resulting from the acts or omissions of Penitentiary Complex staff under this Agreement and shall indemnify, hold and save harmless, and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, arising in connection with and in the course of the performance of such services.

9.3 *Prison Guards*

9.3.1 The United Nations shall be responsible for dealing with any claims by Unit detainees or other third parties for personal injury, loss, illness, death or

damage to their property arising in connection with and in the course of the performance by the Prison Guards of their duties under this Agreement. However, if such claims arise from or are attributable to the failure to provide services in accordance with this Agreement or gross negligence or wilful conduct of such Prison Guards, the State will be responsible for such claims. The State will also be responsible for all other claims arising from acts or omissions of the Prison Guards for which the United Nations is not responsible under this article.

9.3.2 The State shall also be responsible for loss of or damage to property of the Tribunal or the United Nations and personal injury, illness, death or loss of or damage to property of personnel of the Tribunal or the United Nations arising from or attributable to the failure to provide services under this Agreement or gross negligence or wilful misconduct of such Prison Guards.

9.4 *Persons providing any other services*

9.4.1 Notwithstanding articles 9.1, 9.2 and 9.3 above, the State shall be responsible for all claims by Unit detainees or other third parties resulting from the acts or omissions of persons performing any other services under this Agreement and shall indemnify, hold and save harmless, and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, arising in connection with and in the course of the performance of such services.

9.4.2 In cases where claims result from the acts or omissions of persons performing any other services under the previous provision, and such persons were at the time acting under direct instructions from a Tribunal official acting in his official capacity and within the limits of his authority, the United Nations shall be responsible to the extent the claims were the direct result of such instructions.

9.5 *Obligation to negotiate*

9.5.1 In the event of any occurrence covered by articles 9.1 to 9.4 above, the Parties agree that they will first enter into negotiations, on a case-by-case basis, regarding the consequences of the occurrence, prior to either Party resorting to article 15 of this Agreement. In any negotiation pursuant to this paragraph, the Registrar of the Tribunal shall represent the United Nations and the Minister of Justice shall represent the State.

10. *Terms of Agreement, termination*

10.1 The term of this Agreement shall commence on 1 January 1999 and shall terminate on 31 December 1999.

10.2 The United Nations shall have an irrevocable option to extend this Agreement from 1 January 2000 to 31 December 2000 ("the first option"). In the event the United Nations elects to exercise the first option, it shall have a second irrevocable option to further extend this Agreement from 1 January 2001 to 31 December 2001 ("the second option"). In the event the United Nations elects to exercise the second option, it shall have a third irrevocable option to extend this Agreement from 1 January 2002 to 31 December 2002. Any extension resulting from the exercise of the options described above shall be on the same terms and conditions, provided that the price of the Services shall be adjusted for the renewal

period on the basis of the annual consumer price index figure for family consumption in the series for families of employees with a family income in 1985 below the income line for compulsory medical insurance (1985=100), published by the Central Bureau of Statistics of The Netherlands.

10.3 To exercise the options described in paragraph 10.2 above, the United Nations shall give two months' written notice prior to the expiration of the Agreement or the extension thereof.

10.4 The United Nations may terminate this Agreement on three (3) months' written notice.

11. *Review clause*

11.1 In the event that the number of Unit detainees becomes, at any time, less than twelve (12) persons, the United Nations may request the State to enter into negotiations to conclude a new agreement, in order to provide the United Nations with the Services for the Detention Unit corresponding with its actual penitentiary needs at that time. In the event the United Nations makes such a request, the State shall, in good faith, use its best efforts to reach such an agreement.

12. *Amendments*

12.1 Amendments or additions to this Agreement may be made at any time by a document signed by the State and the United Nations.

13. *Assignment*

13.1 The State or the United Nations may transfer their rights and obligations under this Agreement to a third party only with the written permission of the other Party.

14. *Force majeure*

14.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the State shall give notice and full particulars in writing to the United Nations, of such occurrence or change if the State is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Agreement. The State shall also notify the United Nations of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Agreement. On receipt of the notice required under this paragraph, the United Nations shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances.

14.2 Force majeure, as used in this section, means acts of God, war (whether declared or not), invasion, revolution, insurrection or other acts of a similar nature or force.

15. *Arbitration*

15.1 Disputes between the United Nations and the State concerning the interpretation or application of this Agreement which are not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so

appointed shall appoint a third who shall be the Chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute. The arbitrators shall have no authority to award punitive damages. In addition, unless otherwise provided in this Contract, the arbitral tribunal shall have no authority to award interest.

16. *United Nations privileges and immunities*

16.1 Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations and its subsidiary organs, including the Tribunal.

17. *Confidentiality*

17.1 The State agrees not to communicate at any time to any person or authority external to itself, any information known to it by reason of its association with the United Nations which has not been made public, except with the authorization of the United Nations. These obligations do not lapse upon the termination or expiration of the Agreement.

17.2 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the State under this Agreement shall be the property of the United Nations, shall be treated as confidential and shall be delivered only to United Nations authorized officials on completion of work under Agreement.

18. *Other agreements*

18.1 The Parties acknowledge and agree that this Agreement constitutes a separate agreement from other agreements between them relating to the Penitentiary Complex, including the Lease Contract of 14 July 1994, as amended.

19. *Effective dates*

19.1 The effective date of this Agreement shall be 1 January 1999.

IN WITNESS WHEREOF, the Parties have subscribed to this Agreement, through their authorized representatives, on the dates indicated herein below.

For the State:

(*Signed*) C. W. M. DESSENS
Director-General
Division of Public Law Enforcement
Ministry of Justice
Date: 11 September 1999

For the United Nations:

(*Signed*) Dorothee de SAMPAYO GARRIDO-NIJGH
Registrar
International Tribunal
for the Former Yugoslavia
Date: 25 September 1999

(*r*) Agreement between the United Nations (United Nations University) and the Government of the Hashemite Kingdom of Jordan regarding the establishment of the International Cooperation Office of the United Nations University—International Network on Water, Environment and Health. Signed at Amman on 26 August 1999[21]

Whereas the United Nations University was established as a subsidiary organ of the United Nations by the General Assembly in its resolution 2951 (XXVII) of 11 December 1972,

Whereas the Council of the United Nations University decided at its forty-second session, held in Tokyo from 4 to 8 December 1995, to establish the International Network on Water, Environment and Health as a research and training programme of the University in Hamilton, Ontario, Canada,

Whereas the International Network on Water, Environment and Health is an integral part of the United Nations University in accordance with the Charter of the University,

Whereas the purpose for which the International Network on Water, Environment and Health has been established was to make concrete contributions, through training, education, research, capacity-building and dissemination of information, on issues which relate water to environment and human health,

Whereas the Council of the United Nations University decided at its forty-fourth session, held in Tokyo from 1 to 6 December 1997, to establish International Cooperating Offices in the developing world to assist in the capacity-building water programmes of the International Network on Water, Environment and Health,

Whereas the Government of the Hashemite Kingdom of Jordan wishes to cooperate in giving effect to the location and operation of an United Nations University International Network on Water, Environment and Health International Cooperating Office for the Middle East in Amman, Hashemite Kingdom of Jordan, and

Whereas the Hashemite Kingdom of Jordan is a party to the Convention on the Privileges and Immunities of the United Nations,

Whereas the said Convention is applicable to the United Nations University in accordance with article XI of its Charter,

Whereas the Government of the Hashemite Kingdom of Jordan agrees to grant to the International Cooperating Office all the necessary privileges and immunities, exemptions and facilities to enable it to perform its functions, including programmes of work, projects and other relevant activities,

Desiring to conclude an agreement regulating matters arising from the establishment of the International Cooperating Office in the Hashemite Kingdom of Jordan,

Have agreed as follows:

Article I

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

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

(*b*) "the University" means the United Nations University, established by the General Assembly of the United Nations in its resolution 2951 (XXVII) of 11 December 1972;

(*c*) "the Charter of the University" means the Charter of the University adopted by the United Nations General Assembly in its resolution 3081 (XXVIII) of 6 December 1973;

(*d*) "Government" means the Government of the Hashemite Kingdom of Jordan;

(*e*) "the Higher Council" means the Higher Council for Science and Technology of the Government;

(*f*) "INWEH" means the International Network on Water, Environment and Health, a research and training programme of the University;

(*g*) "ICO" means the International Cooperating Office of INWEH;

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

(*i*) "the Rector" means the Rector of the University and, during his/her absence, any official designated to act on his/her behalf;

(*j*) "the Director" means the Director of INWEH acting on behalf of the Rector in the Hashemite Kingdom of Jordan, or in his/her absence any official designated to act on his/her behalf to be notified to the Government by the Director;

(*k*) "the Regional Coordinator" means the Regional Coordinator of ICO of INWEH for the Middle East;

(*l*) "appropriate authorities" means the national, provincial, regional or local authorities of the Hashemite Kingdom of Jordan as the context may require, in accordance with the laws of the Hashemite Kingdom of Jordan;

(*m*) "official activities" means the activities of INWEH, including those of its ICO, and includes administrative activities;

(*n*) "personnel of ICO" means persons appointed in accordance with article VIII, paragraph 7, of the Charter of the University;

(*o*) "officials" means persons who are appointed under the United Nations Staff Regulations and Rules;

(*p*) "experts" means persons within the meaning of article VI of the Convention;

(*q*) "premises of ICO" means the buildings or part of buildings occupied permanently or temporarily by the University or by meetings convened in the Hashemite Kingdom of Jordan by the University for the purposes of INWEH, including its ICO;

(*r*) "archives" means all records, correspondence, documents, manuscripts, photographs, films and recordings belonging to or held by the University, wherever located.

Article II

LEGAL STATUS

The University shall have the legal status as specified in article XI of the Charter of the University and in this Agreement.

Article III

ACADEMIC FREEDOM

The University, including INWEH and its ICO, shall enjoy the academic freedom required for the achievement of their objectives, with particular reference to the choice of subjects and methods of research and training, the selection of persons and institutions to share in its tasks, and freedom of expression.

Article IV

INVIOLABILITY AND PROTECTION

1. (*a*) The premises of ICO shall be inviolable. The appropriate authorities shall not enter the premises to perform any official duties therein except with the express consent of, and under conditions approved by, the Regional Coordinator, or at his/her request;

(*b*) The University shall not permit its premises to become a refuge from justice for persons who are avoiding arrest or service of legal process or against whom an order of extradition or deportation has been issued by the appropriate authorities;

(*c*) The premises shall be used solely to further the purposes and activities of the University.

2. The appropriate authorities are under a special duty to take reasonable steps to protect the premises of ICO against any intrusion or damage and to prevent any disturbance of the peace of the premises of ICO or impairment of the dignity of the University.

3. Except as otherwise provided in this Agreement or in the Convention, the laws of the Hashemite Kingdom of Jordan shall apply within the premises of ICO. However, the premises of ICO shall be under the immediate control and authority of the University, which may establish regulations for the execution of its functions therein.

4. The archives of the University shall be inviolable.

5. The University shall be entitled to display its emblem on the premises of ICO and its means of transport.

Article V

PROPERTY, FUNDS AND ASSETS

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

2. The property, funds and assets of the University, 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.

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

(*a*) Hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) Freely transfer its funds, gold or currency to or from the Hashemite Kingdom of Jordan or within the Hashemite Kingdom of Jordan and convert any currency held by it into any other currency.

Article VI

FREEDOM FROM TAXES AND DUTIES

1. The University, its assets, income and other property shall be:

(*a*) Exempt from all direct and indirect taxes; however, the University will not claim exemption from taxes which are, in fact, no more than charges for public utility services rendered at a fixed rate according to the amount of services rendered, and which can be specifically identified, described and itemized;

(*b*) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the University for its official use. It is understood, however, that articles imported under such exemption will not be sold in the Hashemite Kingdom of Jordan except under conditions agreed with the Government;

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

Article VII

COMMUNICATIONS AND PUBLICATIONS

1. No censorship shall be applied to the official correspondence and other official communications of the University.

2. The University shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

3. The University shall have the right to publish freely within the Hashemite Kingdom of Jordan, in the fulfilment of its purposes. It is, however, understood that the University shall respect the laws and the international conventions applicable to the Hashemite Kingdom of Jordan relating to intellectual property.

Article VIII

ENTRY, STAY AND DEPARTURE

1. The appropriate authorities shall facilitate the entry into and departure from the Hashemite Kingdom of Jordan of personnel of ICO, officials and experts and other persons invited thereto on official business.

2. Visas, where required, for persons referred to in paragraph 1 above shall be issued by the Government free of charge and as promptly as possible.

3. The provisions of paragraphs 1 and 2 shall also apply, as appropriate, to the spouses and relatives dependent on the persons referred to in those paragraphs.

4. No act performed by persons referred to in paragraph 1 above in their official capacity with respect to the University shall constitute a reason for preventing their entry into or departure from the territory of the Hashemite Kingdom of Jordan or for requiring them to leave the Hashemite Kingdom of Jordan.

Article IX

PRIVILEGES AND IMMUNITIES OF OFFICIAL PERSONNEL OF ICO AND EXPERTS

1. Officials of the University, regardless of their nationality, shall enjoy such privileges and immunities as are provided for by article V and article VII of the Convention.

2. The Regional Coordinator and his or her spouse and relatives dependent on him or her, unless they are Jordanian citizens or permanent residents of the Hashemite Kingdom of Jordan as defined by applicable Jordanian legislation, shall be accorded the same privileges, immunities and facilities as are enjoyed by diplomatic agents and their families in the Hashemite Kingdom of Jordan.

3. Personnel of ICO shall:

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

(*b*) Be exempt from Jordanian income tax on the salaries and emoluments paid to them by the University;

(*c*) Be immune from national service obligations unless they are citizens of the Hashemite Kingdom of Jordan or permanent residents in the Hashemite Kingdom of Jordan as defined by the applicable legislation of the Hashemite Kingdom of Jordan;

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

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

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

(*g*) Have the right to import free of duty their furniture and effects, including motor vehicles, at the time of first taking up their post in the Hashemite Kingdom of Jordan.

4. Experts of the University shall enjoy the privileges and immunities provided for by article VI of the Convention.

5. Local personnel provided by the Government to ICO, on mutually agreed terms, shall be immune from legal process in respect of words spoken or written and all acts performed by them for ICO.

6. The privileges and immunities are granted by this Agreement in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any individual in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

Article X

EMPLOYMENT OF DEPENDANTS

The spouses and dependants of officials and personnel of ICO shall, upon application, receive authorization for employment in the Hashemite Kingdom of Jordan.

Article XI

IDENTITY CARD AND UNITED NATIONS LAISSEZ-PASSER

1. The Government shall provide all personnel of ICO and officials with an identity card certifying their status under this Agreement.

2. The Government shall recognize and accept United Nations laissez-passer held by officials as valid travel documents. The Government further agrees to issue any required visa, free of charge and as promptly as possible on the United Nations laissez-passer.

Article XII

NOTIFICATION PROCEDURE

No persons referred to in this Agreement shall be entitled to the privileges and immunities accorded under this Agreement unless and until their names and status have been duly notified to the Minister for Foreign Affairs of the Hashemite Kingdom of Jordan.

Article XIII

RESPECT FOR THE LAWS OF THE HASHEMITE KINGDOM OF JORDAN

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 Hashemite Kingdom of Jordan. They also have the duty not to interfere in the internal affairs of the Hashemite Kingdom of Jordan.

2. The United Nations shall cooperate at all times with the appropriate authorities of the Hashemite Kingdom of Jordan to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connection with the privileges and immunities referred to in this Agreement.

Article XIV

DELEGATION OF AUTHORITY

The Government shall, through the Higher Council, conclude an Agreement with the University relating to the contributions, including the occupancy and use of premises, in Amman for ICO.

Article XV

SETTLEMENT OF DISPUTES

1. Any dispute between the Parties concerning the interpretation or implementation of this Agreement or any supplemental agreement that is not settled by negotiation or other agreed method of settlement shall, at the request of either Party, be referred to a tribunal of three arbitrators. One arbitrator will be appointed by the Minister for Foreign Affairs of the Hashemite Kingdom of Jordan, one by the Rector of the University and the third by the two arbitrators. If, within thirty days of the request for arbitration, either Party has not appointed an arbitrator or if, within fifteen days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator.

2. The arbitrators shall determine the procedure of arbitration 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.

3. The University shall take the measures necessary for ensuring the proper settlement of:

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

(*b*) Disputes involving any personnel of ICO, official or expert who by reason of his or her official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Article XVI

FINAL PROVISIONS

1. This Agreement shall enter into force upon signature.

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

3. This Agreement may cease to be in force:

(*a*) By mutual consent of the University and the Government; or

(*b*) If ICO is removed from the territory of the Hashemite Kingdom of Jordan, on the understanding that the relevant provisions in connection with the orderly termination of the operations of INWEH in the Hashemite Kingdom of Jordan and the disposal of its property therein shall remain applicable as long as necessary.

4. The University and the Government may enter into such supplemental agreements as may be necessary.

5. This Agreement shall apply to any person within its scope irrespective of whether the Hashemite Kingdom of Jordan maintains or does not maintain diplomatic relations with the State to which such person belongs, and irrespective of whether the State to which such person belongs grants a similar privilege or immunity to diplomatic agents or nationals of the Hashemite Kingdom of Jordan:

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Agreement.

DONE at Amman, Hashemite Kingdom of Jordan, on 26 August 1999, in duplicate, in the English language.

For the United Nations University:

(*Signed*) Jorgen LISSNER
United Nations Resident Coordinator

For the Government of the Hashemite Kingdom of Jordan:

(*Signed*) Hashem AL-SHBOUL
Minister of Agriculture

(*s*) United Nations Technical Cooperation Agreement between the United Nations and the Government of Greece. Signed at New York on 15 October 1999[22,*]

Whereas the United Nations, represented by the United Nations Department of Economic and Social Affairs (hereinafter referred to "the Department"), and the Government of Greece (hereinafter referred to as "the government"), have agreed to cooperate in the implementation of activities relating to the enhancement of the role, professionalism, ethical standards and values in the public services of Central and Eastern European countries (hereinafter referred to as "the Project"), which Project is described in attachment A hereto,

Whereas the Government has informed the United Nations of its willingness to provide, free of charge, office premises, facilities and funds necessary to carry out the Project, and

Whereas it has been agreed between the United Nations and the Government that the Department shall be responsible for the management of the funds and the implementation of the Project,

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

Article I

CONTRIBUTIONS

1.1 The Government shall provide, free of charge, the office premises, fixtures, equipment and furniture, including services required for cleaning, maintenance, repair and operation of the office premises, to carry out the Project. An inventory of the equipment and furniture provided by the Government is set out in attachment B hereto.

1.2 The Government shall also provide funds in the amount of 2,069,821 United States dollars to cover the costs to be incurred by the Department for the Project as set forth in the budget contained in attachment A.

1.3 The Government shall, in accordance with the schedule of payments set out in attachment C to this Agreement, deposit the aforesaid funds, in convertible currencies of unrestricted use, in the Chase Manhattan Bank, Agencies Banking, 270 Park Avenue, 43rd floor, New York, NY 10017, indicating that such deposit is for the credit of the UNDESA (United Nations Department of Economic Social Affairs) Technical Cooperation Activities Account No. 001-1-506888.

Article II

TRUST FUND

2.1 The Department shall establish a Trust Fund in accordance with the Financial Regulations and Rules of the United Nations for the receipt and administration of the aforesaid funds.

2.2 The Trust Fund and the activities financed there from shall be administered by the Department in accordance with the United Nations Regulations, Rules and directives, applicable to the Department. Accordingly, personnel shall be engaged and administered; equipment, supplies and services purchased; and contracts

* Attachments are not published herein.

entered into in accordance with the provisions of such regulations, rules and directives.

2.3 All financial accounts and statements shall be expressed in United States dollars.

2.4 Financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the financial regulations, rules and directives of the United Nations.

2.5 The Trust Fund shall be charged with expenditures incurred by the Department in the performance of activities under this Agreement.

2.6 The Trust Fund shall also be charged with thirteen per cent (13%) of all expenditures from the Trust Fund, which percentage shall be a charge for programme support services provided by the Department, which may include administrative support costs and the costs for technical personnel as required, in the implementation of the Project.

2.7 The Trust Fund shall also be charged with an amount equivalent to one per cent (1%) of the remuneration or net salary of persons engaged by the Department, and whose engagement is financed by the Trust Fund, to provide a reserve for coverage of any claim for service-incurred death, injury or illness, under the applicable United Nations regulations and rules or contracts, which reserve cannot be refunded to the Government.

Article III

IMPLEMENTATION OF THE PROJECT

3.1 The Department shall commence and continue to conduct operations under this Agreement in accordance with the terms set forth in attachment A, upon the receipt of funds in accordance with the schedule of payments set out in attachment C hereto.

3.2 The Department shall not make any commitments above the amounts specified for expenditure in attachment A.

3.3 If unforeseen expenditures arise, the Department shall submit on a timely basis a supplementary budget to the Government for its appraisal showing the further financing that will be necessary. The Government shall use its best endeavours to obtain the additional funds required. If no such further financing is available, the assistance provided to the Project under this Agreement may be reduced or, if necessary, terminated by the Department. In no event will the Department assume any liability in excess of the funds provided in the Trust Fund.

3.4 Evaluation of the activities financed from this Trust Fund, including joint evaluation by the Department and the Government, shall be undertaken in accordance with the provisions contained in attachment A.

3.5 Any intellectual property rights, including patent rights and copyrights, resulting from the Project shall belong to the United Nations.

Article IV

REPORTING

4.1 The Department shall provide the Government with the following statements and reports prepared in accordance with the United Nations accounting and reporting procedures:

(*a*) Biannual progress reports;

(*b*) An annual financial statement showing income, expenditures, assets and liabilities as of 31 December each year with respect to the funds provided by the Government;

(*c*) A final report and a final financial statement by April of the following year after the dates of expiration or termination of this Agreement.

Article V

PRIVILEGES AND IMMUNITIES

5.1 In all matters connected with this Agreement, the provisions of the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the Convention"), to which the Government of Greece has been a party since 29 December 1947, shall be applied to the United Nations, including the Department, their property, funds and assets, wherever located and by whomsoever held, and to their officials and any person designated to perform services under this Agreement.

5.2 For the purpose of the Convention on the Privileges and Immunities of the United Nations, the premises offered by the Government referred to in article 1.1 above shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the entire term of the Project, including from the preparatory stage through the winding-up.

5.3 In respect of any seminar, symposium, workshop, conference or other research and training activity organized in the framework of the Project in Greece, the Government shall apply the provisions of the standard exchange of letters concerning the holding of United Nations seminars, symposia, workshops, conferences or other research and training activities, a copy of which is herewith attached in attachment D.

Article VI

SETTLEMENT OF DISPUTES

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

Article VII

TERMINATION

7.1 The Department shall notify the Government when, in its opinion, the purposes for which the Trust Fund was established have been realized. The date of which notification shall be deemed to be the date of expiration of this Agreement.

7.2 Either Party may terminate this Agreement by giving the other Party not less than sixty days' written notice of the intention to terminate.

7.3 The obligations assumed by the Parties under this Agreement shall survive the termination or expiration of the agreement to the extent necessary to permit the orderly conclusion of activities, the withdrawal of personnel, funds and property, the settlement of accounts between the Parties hereto and the settlement of contractual liabilities that are required in respect of any subcontractors, consultants or suppliers.

7.4 Any funds that are undisbursed and uncommitted on completion of the Project or termination of the Agreement shall be held in the Account and, pending consultations with the Government, shall be returned to the Government at its request.

7.5 Upon completion or termination of the Project, equipment, including any electronic equipment required for the operation of the information clearing house in the framework of the Project, supplies and property shall be disposed of in consultation with the Government.

Article VIII

MISCELLANEOUS

8.1 Any action required or permitted to be taken under this Agreement may be taken on behalf of the Government by the Minister for Foreign Affairs, or his designated representative, and on behalf of the Department by the Under-Secretary-General, Department of Economic and Social Affairs, or his designated representative.

8.2 Any notice or request required or permitted to be given or made in this Agreement shall be in writing. Such notice or request shall be deemed to be duly given or made when it shall have been delivered by hand, mail, cable or telex to the Party to which it is required to be given or made, at such Party's address specified below or at such other address as the Party shall have specified in writing to the Party giving such notice or making such request.

Article IX

9.1 This Agreement may be amended by written agreement between the duly authorized representatives of Parties hereto, each of which shall give full and sympathetic consideration to any proposal for its amendment.

9.2 This Agreement shall become effective on the date on which it has been signed by both Parties hereto.

IN WITNESS WHEREOF the Government of Greece and the United Nations, acting through their duly authorized representatives, have caused this Agreement to be signed.

For the United Nations Department of Economic and Social Affairs:

(*Signed*) Nitin DESAI
Under-Secretary-General
Department of Economic and Social Affairs
United Nations, New York

For the Government of Greece:

(*Signed*) Elias GOUNARIS
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations

(*t*) Agreement between the United Nations and the Government of the Togolese Republic regarding the establishment in Lomé of the United Nations Regional Centre for Peace and Disarmament in Africa. Signed at Lomé on 17 November 1999[23]

The Government of Togo and the United Nations,

Considering the decision of the Government of Togo and the United Nations, in accordance with resolution 40/151 G of the General Assembly dated 16 December 1985, to establish in Lomé, Togo, the United Nations Regional Centre for Peace and Disarmament in Africa,

Considering that the Government undertakes to assist the United Nations in securing all the necessary facilities for the establishment and functioning of the Centre,

Considering that the Convention on the Privileges and Immunities of the United Nations, to which Togo has been a party since 27 February 1962, applies to the field offices which are an integral part of the Secretariat of the United Nations,

Considering that it is desirable to conclude an agreement to regulate questions arising as a result of the establishment of the Centre in Lomé,

Have agreed as follows:

Article I

DEFINITIONS

In this Agreement:

(*a*) The word "Centre" means the United Nations Regional Centre for Peace and Disarmament in Africa;

(*b*) The expression "the Government" means the Government of Togo;

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

(*d*) The expression "officials of the Centre" means the Director and all members of the staff of the Centre, irrespective of nationality, except those who are recruited locally and paid at hourly rates.

Article II

ESTABLISHMENT OF THE CENTRE

The Centre shall be established in Lomé, Togo, to carry out the functions assigned to it by the General Assembly and the Secretary-General, within the framework of the Department for Disarmament Affairs.

Article III

LEGAL STATUS OF THE CENTRE

1. The provisions of the Convention shall apply fully to the Centre.

2. The Centre and the residence of the Director shall be inviolable. Government officers or officials shall not enter these premises to perform any official duties, except with the consent of the Director and under conditions agreed to by him.

3. Any location in or outside Lomé which may be used temporarily for meetings held by the Centre outside its premises shall be deemed to be covered by this Agreement for the duration of such meetings.

Article IV

PROPERTY, FUNDS AND ASSETS

1. The Centre, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from legal process, except insofar as, in this particular case, the United Nations has expressly waived its immunity. It is, however, understood that such waiver shall not extend to measures of execution.

2. The property, funds and assets of the Centre, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and other form of interference, whether by executive, administrative, juridical or legislative action.

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

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

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

4. The Centre shall be accorded the most favourable, legally available, rate of exchange for its financial activities.

5. The appropriate authorities shall exercise due diligence to ensure the security and protection the Centre and the residence, in order to ensure that the tranquillity of these places is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

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

Article V

PUBLIC SERVICES

1. In addition to the provisions made in paragraph 1 of General Assembly resolution 40/151 G of 15 December 1985, the Government shall provide one office building and one official residence of appropriate standard to the Centre. Such contribution will be stipulated in an exchange of letters between the Government and the United Nations which shall form an integral part of this Agreement. Furthermore, the Government shall, freely and voluntarily, make additional contributions towards the maintenance of the Centre to the best of its ability.

2. The Government shall ensure that the Centre is supplied with the necessary public services on equitable terms. The Centre shall enjoy treatment for the use of telephone, radio-telegraph and mail communication facilities as favourable as that normally accorded to diplomatic missions in Togo.

3. In case of interruption or threatened interruption of the services referred to above, the Centre shall, for the performance of its functions, be accorded by the Government the same priority as is given to essential government agencies.

Article VI

EXEMPTION FROM TAXATION

The Centre, its assets, income and other property shall be exempt from all direct taxes, value-added tax, tolls or duties; it is understood, however, that the Centre will not claim exemption from taxes which are, in fact, no more than charges for public utility services, rendered by the Government or by a corporation under government regulation, at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

Article VII

COMMUNICATION FACILITIES

1. The Centre shall have the right to use codes, and to dispatch and receive its correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

2. The Government shall secure the inviolability of the official communications and correspondence of the Centre and shall not apply any censorship to such communications and correspondence. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound or videotape recordings and electronic data communications dispatched to or by the Centre.

3. The Centre shall have the right to operate, without hindrance or encumbrance and free of any duties, radio and any other telecommunications equipment, including a satellite earth station facility, on United Nations–registered frequencies and those allocated by the Government, within and outside the host country.

Article VIII

OFFICIALS OF THE CENTRE

1. Officials of the Centre shall:

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

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

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

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

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

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

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

2. The Director of the Centre shall enjoy the same privileges and immunities as are accorded by the Government to members of diplomatic missions of compara-

ble rank. For this purpose, the name of the Director of the Centre may be incorporated in the diplomatic list.

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

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

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

Article IX

LOCALLY RECRUITED PERSONNEL PAID AT HOURLY RATES

The terms of employment of persons recruited locally and paid at hourly rates shall be in accordance with United Nations resolutions, decisions, regulations and rules, and with the policies of the competent organs of the United Nations. Locally recruited personnel shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Centre. Such immunity shall continue after the persons concerned cease to be employed by the Centre.

Article X

FINANCIAL AND PERSONAL ADMINISTRATION OF THE CENTRE

1. The activities of the Centre shall be administrated in accordance with the Financial Regulations and Staff Regulations of the United Nations, except as otherwise specifically provided by the General Assembly of the United Nations. The activities of the Centre shall also be administered in accordance with the Financial Rules and the Staff Rules of the United Nations, except as otherwise provided in special rules promulgated by the Secretary-General of the United Nations.

2. The terms of employment of staff of the Centre who are appointed as staff members of the United Nations, including locally recruited persons, shall, regardless of their nationality, derive exclusively from the Staff Regulations and Rules of the United Nations.

Article XI

WAIVER OF PRIVILEGES AND IMMUNITIES

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

Article XII

SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government relating to the interpretation and application of the present Agreement which is not settled by ne-

gotiation 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 Chairman. If within thirty (30) days of the request for arbitration, either Party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of the two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure 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 XIII

ENTRY TO AND EXIT FROM THE HOST COUNTRY

1. All persons referred to in this Agreement and persons invited on official business by the Centre shall have the right of unimpeded entry into, departure from, and free movement and sojourn within the host country. They shall be granted facilities for speedy travel. Visas and entry and exit permits, where required, shall be granted free of charge and as promptly as possible. No activity performed by persons referred to above in their official capacity with respect to the Centre shall constitute a reason for preventing their entry into and departure from the territory of the host country or for requiring them to leave such territory.

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

3. In accordance with the provisions of section 26 of the Convention, the Government shall recognize and accept the United Nations certificate issued to persons travelling on the business of the United Nations.

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

Article XIV

GENERAL PROVISIONS

1. The provisions of the present Agreement shall, where possible, be treated as complementary to those of the Convention, so that the provisions of both the Agreement and the Convention shall be applicable and neither shall restrict the effect of the other.

2. Consultation with respect to modifications of this Agreement shall be entered into at the request of either Party; any such modification shall be made by mutual consent.

3. This Agreement shall cease to be in force by mutual consent of both Parties or if the Centre is moved from the territory of Togo, except for such provisions as may be applicable in connection with the termination of the operations of the Centre in Togo and the disposal of its property therein.

4. This Agreement shall come into force upon signature by both Parties.

IN WITNESS WHEREOF, the undersigned, the duly authorized plenipotentiary of the Government and the duly appointed representative of the United Nations, have

on behalf of the Parties signed the present Agreement, in French and in English. For the purposes of interpretation and in the event of disputes, the English text shall be deemed authentic.

DONE at Lomé, this 17th day of November, nineteen hundred ninety-nine.

For the United Nations: *For the Government of Togo*:

(*Signed*) Jayantha DHANAPALA (*Illegible*)

(*u*) Exchange of letters constituting an agreement between the United Nations and the Republic of Croatia on the status of the Liaison Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and its personnel. Signed at New York on 6 December 1999 and 10 February 2000[24]

I

LETTER FROM THE UNITED NATIONS

6 December 1999

Excellency,

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

I further have the honour to refer to the Constitutional Act on the Cooperation of the Republic of Croatia with the International Tribunal, article 6 of which stipulates that for the efficient cooperation between the Republic of Croatia and the Tribunal, the Government of the Republic of Croatia may allow the establishment of an office of the Tribunal in its territory.

Accordingly, in order to facilitate the performance of the tasks of the Liaison Office of the Prosecutor of the International Tribunal for the Former Yugoslavia in Zagreb (hereinafter "the Liaison Office"), I propose that your Government, in the implementation of its obligations under Article 105 of the Charter of the United Nations, extend to the Liaison Office, as an organ of the United Nations, and to its property, funds, assets and personnel, the privileges and immunities provided for in the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter "the Convention"), to which the Republic of Croatia is a party.

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

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

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

—Other persons assigned to serve with the Liaison Office whose names will be communicated to the Government for that purpose, the privileges and immu-

nities accorded to experts on mission for the United Nations under article VI of the Convention.

Without prejudice to the powers of the Prosecutor under the Statute of the International Tribunal and its Rules of Procedure and Evidence, the Liaison Office and its personnel shall enjoy the following rights and facilities:

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

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

(iii) Access via the Croatian Government Office for Cooperation with the International Tribunal for the Former Yugoslavia to all documentary material in the possession of the Government or State institutions relevant for the effective operation of the Liaison Office;

(iv) The right to have contacts, through the Croatian Government Office for Cooperation with the International Tribunal for the Former Yugoslavia, with central and local government bodies, including the armed forces, and the right to have direct contacts with non-governmental organizations, private institutions and individuals;

(v) The right to have the cooperation of the Croatian Government Office for Cooperation with the International Tribunal for the Former Yugoslavia and to meet regularly with its personnel to present and discuss requests for assistance;

(vi) The right to have access to all prisons, detention centres and places of interrogation, upon approval by the Ministry of Justice, via the Croatian Government Office for Cooperation with the International Tribunal for the Former Yugoslavia;

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

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

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

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

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

Furthermore, in accordance with the provisions of article II of the Convention, the property, funds and assets of the Liaison Office, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expro-

priation and any other form of interference, whether by executive, administrative, judicial or legislative action. The archives of the Liaison Office, and in general, all documents belonging to, used or held by it, wherever located in the Republic of Croatia and by whomsoever held, shall be inviolable.

It is understood that the Government shall, via the Croatian Government Office for Cooperation with the International Tribunal for the Former Yugoslavia, to the maximum extent possible, assist the Liaison Office in finding such premises as may be required for conducting the official and administrative activities of the Liaison Office in the territory of the Republic of Croatia. All premises used by the Liaison Office and its members shall be inviolable and subject to the exclusive control and authority of the Liaison Officer.

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

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

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

(*Signed*) Kofi A. ANNAN

II

LETTER FROM THE PERMANENT MISSION OF THE REPUBLIC OF CROATIA TO THE UNITED NATIONS

10 February 2000

Excellency,

I have the honour to acknowledge receipt of Your Excellency's letter dated 6 December 1999 addressed to me, which reads as follows:

[See letter I]

I further have the honour to confirm on behalf of the Government of the Republic of Croatia its agreement with the provisions contained in Your Excellency's letter of 6 December 1999 and with Your Excellency's proposal that your letter of 6 December 1999 and this letter in reply constitute an agreement between the Republic of Croatia and the United Nations on the status of the Liaison Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and its personnel with immediate effect upon the date of this reply.

(*Signed*) Ivan ŠIMONOVIĆ
Permanent Representative
of the Republic of Croatia to the United Nations

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

Basic Cooperation Agreement between the United Nations (United Nations Children's Fund) and the Government of the Hashemite Kingdom of Jordan. Signed at Amman on 30 June 1999[25]

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

Whereas UNICEF and the Government of the Hashemite Kingdom of Jordan wish to establish the terms and conditions under which UNICEF shall, in the framework of the operational activities of the United Nations and within its mandate, cooperate in programmes in Jordan,

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

Article I

DEFINITIONS

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

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

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

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

(*d*) "Government" means the Government of the Hashemite Kingdom of Jordan;

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

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

(*g*) "Kingdom" means the Hashemite Kingdom of Jordan;

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

(*i*) "persons performing services for UNICEF" means individual contractors, other than officials, engaged by UNICEF to perform services in the execution of programmes of cooperation;

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

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

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

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

Article II

SCOPE OF THE AGREEMENT

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

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

Article III

PROGRAMMES OF COOPERATION AND MASTER PLAN OF OPERATIONS

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

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

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

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

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

Article IV

UNICEF OFFICE

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

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

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

Article V

ASSIGNMENT TO UNICEF OFFICE

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

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

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

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

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

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

Article VI

GOVERNMENT CONTRIBUTION

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

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

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

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

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

2. The Government shall also facilitate to UNICEF:

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

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

3. In the event that UNICEF does not maintain a UNICEF office in the Kingdom, the Government undertakes to contribute towards the expenses incurred by UNICEF in maintaining a UNICEF regional/area office elsewhere, from which

support is provided to the programmes of cooperation in the Kingdom, up to a mutually agreed amount, taking into account contributions in kind, if any.

Article VII

UNICEF SUPPLIES, EQUIPMENT AND OTHER ASSISTANCE

1. UNICEF's contribution to programmes of cooperation may be made in the form of financial and other assistance. Supplies, equipment and other assistance intended for the programmes of cooperation under the present Agreement shall be transferred to the Government upon arrival in the Kingdom, unless otherwise provided in the master plan of operations.

2. UNICEF may place on the supplies, equipment and other materials intended for programmes of cooperation such markings as are deemed necessary to identify them as being provided by UNICEF.

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

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

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

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

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

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

9. The Government shall, as soon as possible, but in any event within sixty (60) days after the end of each of the UNICEF financial years, submit to UNICEF

progress reports on the programmes of cooperation and certified financial statements, audited in accordance with existing government rules and procedures.

Article VIII

INTELLECTUAL PROPERTY RIGHTS

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

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

Article IX

APPLICABILITY OF THE CONVENTION

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

Article X

LEGAL STATUS OF UNICEF OFFICE

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

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

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

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

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

Article XI

UNICEF FUNDS, ASSETS AND OTHER PROPERTY

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

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

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

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

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

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

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

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

Article XII

GREETING CARDS AND OTHER UNICEF PRODUCTS

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

Article XIII

UNICEF OFFICIALS

1. Officials of UNICEF shall:

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

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

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

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

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

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

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

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

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

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

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

Article XIV

EXPERTS ON MISSION

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

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

Article XV

PERSONS PERFORMING SERVICES FOR UNICEF

1. Persons performing services for UNICEF shall:

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

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

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

Article XVI

ACCESS FACILITIES

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

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

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

Article XVII

LOCALLY RECRUITED PERSONNEL ASSIGNED TO HOURLY RATES

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

Article XVIII

FACILITIES IN RESPECT OF COMMUNICATIONS

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

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

3. UNICEF shall have the right to operate radio and other telecommunication equipment at the frequencies internationally registered for the United Nations, and any other frequencies set by the Government, between the offices of the international organization (UNICEF), in particular with UNICEF headquarters in New York, and inside the Kingdom.

4. In the establishment and operation of its official communications, UNICEF shall be entitled to the rights and bound by the obligations of the relevant international conventions, including the International Telecommunication Convention (Nairobi, 1982) and the regulations annexed thereto.

Article XIX

FACILITIES IN RESPECT OF MEANS OF TRANSPORTATION

The Government shall, in accordance with the formal requirements of the Kingdom, grant UNICEF necessary permits or licences for, and shall not impose undue restrictions on, the acquisition or use and maintenance by UNICEF of civil aeroplanes and land motor vehicles required for programme activities under the present Agreement. These formal requirements, however, shall not affect the general principles laid down in this article.

Article XX

WAIVER OF PRIVILEGES AND IMMUNITIES

The privileges and immunities accorded under the present Agreement are granted in the interests of the United Nations, and not for the personal benefit of the persons concerned. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual referred to in articles XIII, XIV and XV in any case where, in his opinion, such immunity impedes the course of

justice and can be waived without prejudice to the interests of the United Nations and UNICEF.

Article XXI

CLAIMS AGAINST UNICEF

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

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

Article XXII

SETTLEMENT OF DISPUTES

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

Article XXIII

ENTRY INTO FORCE

1. The present Agreement shall enter into force, following signature, on the day after the exchange between the Parties of an instrument of ratification or acceptance by the Government and of an instrument constituting an act of formal confirmation by UNICEF and, pending such ratification, it shall, by agreement of the Parties, be given provisional effect.

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

Article XXIV

AMENDMENTS

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

Article XXV

TERMINATION

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

*
* *

A similar Basic Cooperation Agreement exists between the United Nations Children's Fund and the Government of Georgia.

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4. AGREEMENTS RELATING TO THE UNITED NATIONS POPULATION FUND

Exchange of letters constituting an agreement between the United Nations (United Nations Population Fund) and the Kingdom of the Netherlands concerning arrangements for a forum associated with the five-year review of the implementation of the Programme of Action of the International Conference on Population and Development. Signed at New York on 4 February 1999[26]

II

LETTER FROM THE UNITED NATIONS POPULATION FUND

4 February 1999

Sir,

I have the honour to refer to the letter dated March 1998, ref. 98/FE/020, (attached), from Mr. J. P. Pronk, former Minister for Development Cooperation of the Netherlands, which indicated that the Netherlands Government was willing to host a forum associated with the five-year review of the implementation of the Programme of Action of the International Conference on Population and Development and which also indicated that the Netherlands Government was willing to contribute financially to the Forum; and to recent discussions between officials of the United Nations Population Fund (UNFPA) and the Netherlands Ministry of Foreign Affairs.

With the present letter, I wish to obtain your Government's acceptance of the following arrangements:

I. DATE AND PLACE OF THE FORUM

1. The Forum, organized by UNFPA, shall be held at the Netherlands Congress Centre (Nederlands Congres Centrum) at The Hague, from 8 to 12 February 1999.

2. The activities related to The Hague Forum shall begin on Sunday, 7 February 1999, and end on Friday, 12 February 1999.

II. ATTENDANCE AT THE FORUM

1. The Forum shall be open to participation by:

(*a*) The representatives of States invited to participate by UNFPA;

(*b*) The representatives of associate members of the regional, commissions of the United Nations where UNFPA maintains programmes of assistance;

(*c*) The representatives of entities, intergovernmental organizations and other entities that have received a standing invitation from the General Assembly to participate in conferences in the capacity of observers;

(*d*) The representatives of specialized agencies of the United Nations;

(*e*) The representatives of other intergovernmental organizations;

(*f*) The representatives of interested organs of the United Nations;

(*g*) The representatives of non-governmental organizations (NGOs), including groups, invited by foundations, youth groups and regional parliamentary groups and UNFPA;

(*h*) Officials of the United Nations;

(*i*) Experts and consultants in the field of population and development invited by UNFPA;

(*j*) Other persons invited by UNFPA.

2. The public meetings of the Forum shall be open to representatives of information media accredited by the United Nations at its discretion, after consultation with the Government.

III. RESPONSIBILITIES OF UNFPA

1. Organize the Forum.

2. Issue invitations to the Forum and provide the Government with the list of participants.

3. Finance travel and related expenses for entitled participants.

4. Finance travel and related expenses for UNFPA officials, as well as experts and consultants invited by UNFPA referred to in paragraph II (1)(*c*) above.

5. In accordance with existing United Nations requirements, select, engage and finance a local contractor and personnel to assist UNFPA in the organization of the Forum.

6. Organize the registration of participants.

7. Provide a shuttle service to and from the principal hotels and the Forum premises for the duration of the Forum.

IV. RESPONSIBILITIES OF THE GOVERNMENT

1. The Government shall contribute 1,000,000 guilders towards the costs of the Forum.

2. The Government shall provide medical facilities adequate for first aid in emergencies within the Forum area. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital.

3. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Conference in an atmosphere of security and tranquillity, free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the

Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

V. LIABILITY

1. The Government shall deal with any action, claim or other demand against the United Nations or its personnel arising from:

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

(*b*) Injury to persons or damage to or loss of property incurred in using the transportation provided by the Government for the Forum;

(*c*) The employment by the Government of local personnel for the Forum.

2. The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand, unless the Parties agree that such injury or damage was caused due to gross negligence or wilful misconduct on the part of United Nations personnel.

VI. PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (hereinafter referred to as the "Convention"), shall be applicable to the Forum. Accordingly, the representatives of States referred to in paragraph II (1)(*a*) above shall enjoy the privileges and immunities provided under article IV of the Convention; officials of the United Nations performing functions in connection with the Forum referred to in paragraph II (1)(*h*) above shall enjoy the privileges and immunities under articles V and VII of the Convention and experts and consultants referred to in paragraph II (1)(*i*) above shall enjoy the privileges and immunities under articles VI and VII of the Convention.

2. The representatives of States which are not Members of the United Nations and the representatives referred to in paragraph I (l)(*b*) above shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Forum.

3. The representatives of the specialized agencies of the United Nations referred to in paragraph I (1)(*d*) above shall enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

4. The participants referred to in paragraph I (1)(*c*), (*e*), (*f*), (*g*) and (*j*) above shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Forum.

5. The local contractor and personnel engaged to provide services for the Forum, under paragraph III (5) above shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with the Forum.

6. The Government shall impose no impediments to the transit to and from meetings of persons whose presence at the Forum is authorized by UNFPA and shall grant, without distinction on the ground of nationality, race, sex, religion and political affiliation, any visas required for such persons promptly and without charge, provided that the general conditions concerning entry are fulfilled. They shall be granted facilities for speedy travel.

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

8. Without prejudice to their privileges and immunities, it is the duty of all participants enjoying privileges and immunities to respect the laws and regulations of the Netherlands. They also have a duty not to interfere in the internal affairs of the Netherlands.

VII. SETTLEMENT OF DISPUTES

Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention or of any other applicable agreement, shall, unless the Parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the 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 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 procedures, 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 propose that, upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an agreement between the United Nations and the Kingdom of the Netherlands, which shall enter into force on the date of your reply and shall remain in force for the duration of the Forum and for such additional period as is necessary for its preparation and for all matters relating to any of its provisions to be settled.

(*Signed*) Nafis SADIK, M.D.
Executive Director

ATTACHMENT

To the Executive Director of the United Nations Population Fund
Dr. Nafis SADIK

220 East 42nd Street, New York, NY 10017, USA

Date: March 1998

Reference: 98/FE/020

Section: DVN/FE

Subject: Programme of Action of the International Conference on Population and Development

With reference to your letters of 28 November 1997 and 12 January 1998 about the Forum associated with the five-year review of the implementation of

the Programme of Action of the International Conference on Population and Development, I am pleased to grant your request and host the Forum in Amsterdam. Our willingness to host the Forum is a sign of our commitment to the Conference process.

The Netherlands is also willing to contribute financially to the Forum. However, we would like to receive a more specific budget proposal before making any financial commitment.

(*Signed*) J. P. PRONK
Minister for Development Cooperation

II

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

4 February 1999

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

[See letter I]

In reply to your letter, I hereby confirm, on behalf of the Government of the Kingdom of the Netherlands, the above and that this exchange of letters shall constitute an Agreement between the United Nations and the Kingdom of the Netherlands, which shall enter into force on the date of this reply and shall remain in force for the duration of the Forum and for such additional period as is necessary for its preparation and for all matters relating to any of its provisions to be settled. The total duration of this Agreement shall not exceed one year.

(*Signed*) Peter VAN WALSUM
Ambassador
Permanent Representative
to the United Nations

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

In 1999, no State 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.

As at 31 December 1999, 106 States were parties to the Convention.[28]

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2. INTERNATIONAL LABOUR ORGANIZATION

(*a*) Cooperation Agreement between the International Labour Organization and the Inter-Parliamentary Union. Signed at Geneva on 27 May 1999[29]

Whereas the aim of the International Labour Organization (hereinafter referred to as "ILO") is to achieve social justice through the improvement of conditions of labour, the protection of workers and the promotion of democratic principles such as the principle of freedom of association based on tripartite dialogue,

Whereas the purpose of the Inter-Parliamentary Union (hereinafter referred to as "IPU") is to work for peace and cooperation among peoples and for the firm establishment of representative institutions based on the respect of fundamental human rights,

Whereas, the common objectives of ILO and IPU are the pursuance of peace and democracy by promoting international cooperation in their respective areas of competence in order to further universal respect for justice, the rule of law, human rights and fundamental freedoms, and whereas these common goals and objectives can be effectively advanced through cooperation and joint action,

Now therefore, ILO and IPU, being desirous of cooperating with each other within the framework of their respective constitutional mandates, have agreed as follows:

Article I

GENERAL

1.1 ILO recognizes that IPU, as the world organization of national parliaments, by virtue of its character and responsibilities plays an important role in promoting peace, democracy and international cooperation, in furtherance of and in conformity with the purposes for which ILO was established.

1.2 IPU recognizes the responsibilities and fields of action of ILO under its Constitution and undertakes to give active support to the activities of ILO, in accordance with the purposes and principles of the ILO Constitution and with the policies established by the respective governing bodies of the parties.

1.3 ILO and IPU agree that the strengthening of cooperative relations between them will facilitate the effective exercise of their mutually complementary activities and therefore undertake to further those relations through the adoption of the practical measures set forth in the following provisions of this Agreement.

Article II

CONSULTATIONS AND EXCHANGE OF INFORMATION

2.1 ILO and IPU shall hold consultations on a regular basis in order to exchange views on matters of common concern. The date and form of such consultations shall be agreed between the parties.

2.2 Each organization shall keep the other appropriately informed of developments in its work and shall arrange for a regular exchange of documents and publications which may be of mutual interest.

Article III

MUTUAL REPRESENTATION

3.1 ILO shall be invited to be represented and to participate as an observer at meetings of the Inter-Parliamentary Conference. ILO may also, whenever appropriate and subject to such conditions as may be agreed upon, be invited to participate in other meetings of IPU dealing with subjects which fall within the competence, activities and expertise of ILO.

3.2 IPU shall be invited to participate in meetings of the International Labour Conference with the status of an official international organization. IPU may also, whenever appropriate and subject to such conditions as may be agreed upon, be invited to participate in meetings organized by ILO in which IPU has expressed an interest.

Article IV

AREAS OF COOPERATION

4.1 In order to achieve effective cooperation and liaison between the two organizations, each organization shall designate a senior official to follow the progress of cooperation and to act as a point of contact.

4.2 ILO and IPU shall together explore areas for cooperation and shall offer appropriate assistance to each other in support of future joint action, particularly with regard to:

(*a*) The promotion or ratification of instruments adopted by the International Labour Conference and their implementation through appropriate national legislation and regulations; and

(*b*) The promotion and implementation of fundamental principles and rights at work, set out in the ILO Constitution and in the Declaration of Philadelphia annexed to it and recalled in the ILO Declaration on Fundamental Principles and Rights at Work, as an essential factor of parliamentary democracy and development.

4.3 These joint activities may include, but are not limited to, the holding of joint special meetings or conferences at appropriate intervals on subjects within the competence of ILO, and of particular relevance and interest to parliaments and parliamentarians, including follow-up action and implementation of relevant ILO activities.

4.4 Each organization may ask the other for its assistance in the technical study of matters which are within the latter's field of competence. Any such request shall be examined by the other organization, which, within the framework of its policies, programmes and rules, shall make every effort to give appropriate assistance in such a manner and along such lines as may be agreed upon by the two organizations.

4.5 Each organization shall follow its own procedures in authorizing and financing the conduct of joint activities.

Article V

ENTRY INTO FORCE, AMENDMENTS AND DURATION

5.1 This Agreement, having previously been approved by both the Governing Body of ILO and by the Inter-Parliamentary Council, shall enter into force on the date of its signature by the duly authorized representatives of the Parties.

5.2 This Agreement may be amended by mutual consent in accordance with the respective rules and regulations of the Parties. Such arrangements shall enter into force one month following notification of consent by both Parties.

5.3 Each Party may terminate this Agreement by giving six months' notice in writing to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized representatives of ILO and IPU, have signed the present Agreement.

Signed this 27th day of May 1999 at Geneva in two originals each in the English and French languages, both of which are the original and authentic texts.

For the International Labour Organization:
(*Signed*) Juan SOMAVIA
Director-General
of the International Labour Office

For the Inter-Parliamentary Union:
(*Signed*) Miguel Angel MARTÍNEZ
President
of the Inter-Parliamentary Union

(*Signed*) Anders B. JOHNSSON
Secretary-General
of the Inter-Parliamentary Union

(*b*) Memorandum of Understanding between the International Labour Organization and the Pan-American Health Organization to support Latin America and Caribbean countries in the extension of social protection in health to excluded populations. Signed at Lima on 24 August 1999[30]

Preamble

Whereas the International Labour Organization (hereinafter referred to as "ILO"), a specialized agency of the United Nations, is the constitutionally mandated international organization and competent body to set and deal with international labour standards and, inter alia, to ensure the extension of social security and medical care to all,

Whereas the Pan-American Health Organization (hereinafter referred to as "PAHO"), serves as the regional office of the World Health Organization for the Americas and the specialized health agency of the inter-American system, internationally recognized and mandated to promote health and to prevent disease and contribute to attaining equitable access to quality health services,

Recalling that the heads of State and Government attending the World Summit for Social Development pledged to ensure a particular focus on and priority attention to the fight against the worldwide conditions that pose severe threats to the health, safety, peace, security and well-being of their people,

Considering that the goals and objectives of social development, articulated at the World Summit for Social Development, require continuous efforts to reduce and eliminate major sources of social distress and instability for the family and for society,

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998,

Aware of the strategic objectives of ILO of enhancing the coverage and effectiveness of social protection for all, as well as strengthening tripartism and social dialogue,

Aware of the strategic and programme orientation of PAHO for the period 1999-2002 of strengthening and developing health-care systems and services in the Americas for attaining equitable access to quality and appropriate health care,

Recalling the mandate of the First Summit of the Americas, held at Miami in December 1994, of supporting member States in their health sector reform efforts,

Considering that the two organizations are committed to support countries of Latin America and the Caribbean to expand social protection in health to excluded populations,

The Parties have reached the following understanding:

Section I

PURPOSE AND SCOPE

This Memorandum of Understanding establishes a framework for cooperation between ILO and PAHO to develop and implement a joint initiative outlining activities to promote equitable access to quality and appropriate health care in Latin America and the Caribbean.

Section II

OBJECTIVES

The objective of the Parties is to design and implement jointly an initiative, based on a common work plan, to support the countries of Latin America and the Caribbean to reach the following long-term objectives:

(*a*) To enable States members of ILO and PAHO in Latin America and the Caribbean to extend coverage of health-care systems and to develop policies for extending social protection for health care, particularly in the informal sector, in both urban and rural areas and among unprotected groups;

(*b*) To involve all the major stakeholders in the process of policy design, implementation, monitoring and evaluation, in order to gain public support for health reform policy in the region.

Section III

IMPLEMENTATION

In the implementation of this Memorandum of Understanding, the Parties shall:

(*a*) Establish a technical committee composed of officials from the secretariats of both organizations to exchange information and promote and coordinate activities which the Parties may agree upon;

(*b*) Produce a position paper on the comparative advantages and disadvantages of micro-insurance schemes and other alternative mechanisms for extending social health insurance; examine, in the framework of the position paper, options and recommendations to strengthen existing social health insurance structures, as well as ways to enhance links between micro-insurance schemes and social security schemes, as appropriate;

(*c*) Conduct case studies in the region in the framework of a comprehensive overview of successful and unsuccessful experiences of micro-insurance in terms of their contribution to the reduction of exclusion and enhanced access to health services and with a view to developing recommendations of best practices;

(*d*) Carry out a comparative analysis of national policies for health insurance; this analysis will provide information on institutional causes of, and the magnitude of, exclusion from social protection for health care and identify strategies to overcome these obstacles specifically adapted to the conditions prevailing in Latin American and the Caribbean;

(*e*) Jointly organize a regional tripartite meeting on the "Extension of Social Protection for Health Care to Unprotected People in Latin America and the Caribbean" in November 1999 in Mexico City; the meeting will bring together all key stakeholders (workers' and employers' organizations, governmental institutions, including ministries of labour, health and social development, representatives of social security institutions, local government, non-governmental organizations, international organizations and selected communities, as well as selected research institutions and universities); the meeting will formulate an action plan to support countries in their efforts to extend social protection for health care to the informal sector and excluded populations;

(*f*) Develop a tool kit for the use of decision makers in Latin America and Caribbean countries in implementing policies to extend social protection for health care, and a support structure for micro-insurance schemes;

(*g*) Any other activities as the Parties may agree upon.

Section IV

OPERATIONAL ASPECTS

In the framework of this Memorandum of Understanding, the Parties undertake the following responsibilities:

(*a*) ILO and PAHO shall jointly bear the costs of the regional meeting planned for November 1999 in Mexico;

(*b*) ILO and PAHO shall establish joint technical cooperation programmes with the member countries involving national counterparts;

(*c*) ILO and PAHO shall coordinate the implementation of such cooperation programmes with the member countries;

(*d*) ILO and PAHO shall join their efforts for the mobilization of external financial and technical resources from the international community to advance this initiative and shall develop a general framework to promote these efforts;

(*e*) The initiative of ILO and PAHO should serve as a catalyst for the development and implementation of, and financial commitments towards, innovative approaches for the extension of health insurance, in partnership and consultation with all key stakeholders;

(*f*) ILO and PAHO shall share information about proposed development operations to be financed within the resources available from each organization; operational plans will be endorsed and realized through exchanges of letters in the context of this Memorandum of Understanding;

(*g*) ILO and PAHO shall consult and agree on how the activities to be jointly undertaken should be financed.

Section V

COLLABORATIVE AGREEMENTS

1. *External collaboration*

ILO and PAHO may, in accordance with their respective rules and regulations, collaborate with outside specialized institutions and universities for the following purposes:

(*a*) To carry out specific research tasks, in accordance with modalities to be agreed upon by the Parties;

(*b*) To publish the results of research undertaken in connection with this Memorandum of Understanding;

(*c*) To advise on the design and the scientific evaluation of activities to be carried out in connection with this Memorandum of Understanding.

2. *Intellectual property*

Research results shall, as far as possible, be published jointly; where this is not feasible, the Parties agree, after consultation with each other, to permit either organization to publish any of the results on its own or in collaboration with others, giving due recognition to the contribution of the other organization. For material published under joint copyright, each Party shall have the right to adapt the published material for its work in other regions or outside the framework of this Memorandum of Understanding.

Section VI

EVALUATION

ILO and PAHO will jointly evaluate progress in the implementation of this Memorandum of Understanding at least once every year. The Parties may consider a specific role for outside research and evaluation bodies for this purpose and may consider setting up a technical advisory group for this purpose.

Section VII

COOPERATION WITH INTERNATIONAL AND NATIONAL ORGANIZATIONS

1. ILO and PAHO may consult, separately or jointly, with international and national organizations, as appropriate and in accordance with their respective rules and regulations, in order to achieve the objectives of the initiative, maximize the efficient use of resources or acquire additional funding. These may include both public and private organizations active in the area of social, economic and health development. The Parties shall inform each other on their respective contacts in this regard.

2. ILO and PAHO may, in accordance with their respective rules and regulations, explore strategic alliances with other governmental and non-governmental organizations to implement appropriate strategies for related activities in the region.

Section VIII

CONFLICT RESOLUTION

Any differences in the interpretation or application of this Memorandum of Understanding shall be resolved by common agreement of the Parties. In the absence of such agreement, any differences shall be referred to arbitration under a procedure to be agreed upon by the Parties.

Section IX

DATE OF ENTRY INTO FORCE, AMENDMENTS AND TERMINATION

1. This Memorandum of Understanding shall enter into force upon its signature and shall remain in force until revoked by the Parties. After an initial period of three years, the Parties shall review the Memorandum of Understanding with a view to its continuation, amendment or termination.

2. This Memorandum of Understanding may be amended by written agreement between the Parties. Such amendments shall specify the effective date of the modifications.

3. This Memorandum of Understanding may be terminated by either of the Parties at any time upon giving 90 days' advance notice in writing to the other Party. However, such termination shall be without prejudice to any commitments made to third parties before the notice of termination was received.

For and on behalf of the International Labour Organization:

(*Signed*) Juan SOMAVIA
Director-General

For and behalf of the Pan-American Health Organization:

(*Signed*) George A. O. ALLEYNE
Director

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Cooperation Agreement between the United Nations Educational, Scientific and Cultural Organization and the International Criminal Police Organization—Interpol. Signed at Paris on 5 October 1999[31]

Preamble

The International Criminal Police Organization—Interpol (hereinafter referred to as INTERPOL) and *The United Nations Educational, Scientific and Cultural Organization* (hereinafter referred to as UNESCO),

Wishing to coordinate their efforts within the framework of the mission assigned to them,

Recognizing that INTERPOL is responsible for ensuring and promoting the widest possible mutual assistance between all the 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,

Recognizing that the purpose of UNESCO is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms,

Recognizing the desirability of UNESCO cooperating with INTERPOL in combatting, among other things, illicit traffic in cultural property and crime, taking advantage of new technology, such as cybercrime and child pornography,

Have agreed on the following:

Article 1

MUTUAL CONSULTATION

1. INTERPOL and UNESCO shall consult regularly on policy issues and matters of common interest for the purpose of realizing their objectives and coordinating their respective activities.

2. INTERPOL and UNESCO shall exchange information on developments in any of their fields and projects that are of mutual interest and shall reciprocally take observations concerning such activities into consideration with a view to promoting effective cooperation.

3. When appropriate, consultation shall be arranged at the required level between representatives of UNESCO and INTERPOL to agree upon the most effective way in which to organize particular activities and to optimize the use of their resources in compliance with their respective mandates.

Article 2

EXCHANGE OF INFORMATION

1. INTERPOL and UNESCO shall combine their efforts to achieve the best use of all available information relevant to trafficking of cultural properties and crime, taking advantage of new technology.

2. Subject to such arrangements as may be necessary for the safeguarding of confidential information, INTERPOL and UNESCO shall ensure full and prompt exchange of information and documents concerning matters of common interest.

3. Communication of police information by INTERPOL to UNESCO shall be subject to the internal regulations of INTERPOL. If an item of information communicated by INTERPOL to UNESCO is modified or deleted, INTERPOL shall inform UNESCO so that the latter may keep its own archives up to date. INTERPOL shall not be liable in the event that the use by UNESCO of an item of information is prejudicial to an individual's or entity's interests, if INTERPOL has informed UNESCO that that item of information has been modified or deleted. Police information communicated by INTERPOL to UNESCO shall be used by UNESCO exclusively for the purposes of prevention or suppression of transnational ordinary law crime, with due respect for national laws and international treaties.

4. Communication of information by UNESCO to INTERPOL shall be subject to the provisions of UNESCO's internal regulations.

Article 3

RECIPROCAL REPRESENTATION

1. Representatives of INTERPOL and representatives of UNESCO shall be invited to attend meetings convened under their respective auspices and participate, as observers without vote, in the deliberations thereof, with respect to matters of mutual interest and competence. Additional arrangements for reciprocal representation may be made if and when necessary.

2. The Director-General of UNESCO and the Secretary-General of INTERPOL shall each designate a person to act as a focal point with a view to ensuring the implementation of the provisions of the present Cooperation Agreement.

Article 4

TECHNICAL COOPERATION

1. INTERPOL and UNESCO shall, in the interest of their respective activities, seek and share each other's expertise and experience to optimize the effects of such activities.

2. UNESCO shall review, at the request of INTERPOL, projects at national, regional and global levels in order to provide comments and suggestions appropriate to its domain of expertise.

3. By mutual agreement, UNESCO and INTERPOL shall cooperate in the development and execution of programmes, projects and activities relating particularly to crimes and offences concerning cultural property and information and communication technologies.

4. Joint activities to be conducted under the present Cooperation Agreement shall be subject to the approval of individual project documents by both Parties and shall be monitored under an agreed mechanism.

5. INTERPOL and UNESCO shall cooperate in evaluating such programmes, projects and activities of common interest, subject to mutual agreement on a case-by-case basis.

Article 5

PERSONNEL ARRANGEMENTS

Subject to their relevant internal regulations, UNESCO and INTERPOL shall examine the possibility of organizing the exchange of personnel on a temporary basis. They will enter into special arrangements, if necessary, for that purpose.

Article 6

ENTRY INTO FORCE, MODIFICATION AND DURATION

1. The present Cooperation Agreement shall enter into force on the date on which it is signed by the Secretary-General of INTERPOL and the Director-General of UNESCO, subject to the approval of the INTERPOL Executive Committee and of the Executive Board of UNESCO.

2. The present Cooperation Agreement may be modified by mutual consent expressed in writing. It may also be revoked by either Party by giving six months' notice to the other Party.

IN WITNESS WHEREOF, the Secretary-General of the International Criminal Police Organization—Interpol and the Director-General of the United Nations Educational, Scientific and Cultural Organization have signed the present Cooperation Agreement in duplicate in English and French, both texts being equally authentic, on the dates appearing under their respective signatures.

For INTERPOL:

(*Signed*) R. E. KENDALL
Secretary-General
5 October 1999

For UNESCO:

(Signed) Fredrico MAYOR
Director-General
5 October 1999

Supplementary Agreement between the International Civil Aviation Organization and the Government of Canada regarding the headquarters of the International Civil Aviation Organization. Signed at Calgary on 28 May 1999[32]

The International Civil Aviation Organization and the Government of Canada,

Considering the obligations of the Government of Canada as host State to the International Civil Aviation Organization (ICAO),

Considering the Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization signed on 4 and 9 October 1990,

Recalling the desire expressed by the Council, particularly on 12 December 1979, that the Lease for the headquarters premises of the International Civil Aviation Organization be signed by the Government of Canada,

Desiring to replace the Supplementary Headquarters Agreement signed on 12 and 16 September 1980 in order to reflect the relocation of the International Civil Aviation Organization's Headquarters on 1 November 1996,

Have agreed as follows:

Article I

LEASE OF ICAO PREMISES

1. The Government of Canada has signed a lease with the owner of La Maison de l'OACI (hereinafter referred to as "the Lease"), located at 999 University Street (hereinafter referred to as "the Building"), Montreal, Quebec, Canada, for the sole purpose of providing reasonable and adequate space for the headquarters of the International Civil Aviation Organization (hereinafter referred to as "the Organization").

2. The Government of Canada agrees to rent from the owner and the Organization agrees to occupy the entire Building for a period of 20 years and one month, renewable as prescribed in clause 4.4 of the Lease, beginning 1 November 1996, and corresponding to the present needs of the Organization's headquarters. The Organization shall not make substantial alteration to the surface it occupies involving, inter alia, major electrical or mechanical systems and base building structures without the consent of the Government of Canada.

3. The Government of Canada and the Organization agree that the total rental cost of the Building includes the rent as set out in clause 3 of the Lease, operating costs as set out in clause 10 of the Lease and property taxes as set out in clause 6 of the Lease.

4. The Government of Canada shall assume, on a yearly basis, 75 per cent of the rent and of operating costs and all of the property taxes; the Organization agrees, on its part, to assume, on a yearly basis, 25 per cent of the rent and of operating costs to be paid to the Government of Canada. In accordance with article 6 of the Headquarters Agreement, the Government of Canada shall continue to exempt the Organization from all direct taxes; however, the Organization shall not claim exemption from taxes which are, in fact, no more than charges for public utility services.

5. The Government of Canada and the Organization shall work in cooperation to ensure that expenses relating to the operation of the Building are kept as low as possible.

Article II

OBLIGATIONS UNDER THE LEASE

1. Taking into consideration that the said premises are rented solely and exclusively for the needs of the Organization's headquarters, the Government of Canada shall, as the lessee, assure that the lessor complies with its obligations as specified in the Lease or as they may be prescribed in the Civil Code of Quebec, or under any other laws.

2. Subject to the relevant provisions of the Headquarters Agreement and the present Agreement, in particular article I, paragraph 4, the Organization shall, as the lawful occupant of the premises located in the Building, assume the same obligations and liabilities towards the Government of Canada as the Government of Canada shall, as the lawful lessee of the said premises, assume towards the lessor under the Lease or the Civil Code of Quebec or any other law.

3. Notwithstanding any references in this Supplementary Agreement to the Lease between the Government of Canada and the owner of the premises, the mutual rights and obligations of the Government of Canada and the Organization with respect to the headquarters premises shall be governed by this Supplementary Agreement.

Article III

CONSULTATION

1. Any matter related to the use and management of the Building which may, in the view of the Organization, affect its interest as the lawful occupant of the Building shall be subject to consultation between the Parties, with a view to reaching a mutually satisfactory agreement.

2. Without limiting the generality of the foregoing, the matters subject to consultation include sublease by the Government of Canada, security, cleaning standards, standards for leased accommodation, replacement of building management and/or contractors, and any matter related to the option to purchase the Building.

Article IV

CONCURRENCE

The following matters shall be subject to the concurrence of the Organization, which the Organization as the lawful occupant of the Building shall not unreasonably withhold:

(1) Estimated capital costs of repair, replacement, maintenance and operation of the Building and equipment incurred after the first five (5) years other than capital costs, which will be borne solely by the lessor;

(2) Estimated capital costs of renovation and upgrades of the Building and equipment at any time except the cost of the atrium extension, which will be borne by the lessor;

(3) Projected operating costs that would exceed substantially the operating costs of the previous year.

Article V

SPACE ALLOCATED TO REPRESENTATIVES AND OTHERS

1. On conditions it may determine consistent with the Lease, the Organization shall have the right to:

(*a*) Provide space for occupancy by representatives of the member States on the Council and representatives of such other States members of the Organization and other international organizations who are accredited to it; it is understood that no consular activities shall be carried out in the building;

(*b*) Provide parking space on the premises to its staff members and to the representatives mentioned in subparagraph (*a*) above and to such other persons as required by the official activities of the Organization;

(*c*) Make available the conference facilities to:

(i) Other United Nations bodies, intergovernmental and non-governmental organizations, listed in annex A to this Agreement. All additional expenses incurred by such use shall be borne entirely by the Organization. The Government of Canada shall be informed in writing pursuant to a subsidiary arrangement as set out in annex B as soon as possible prior to holding such meetings;

(ii) Other bodies not covered in (i) above, with the concurrence of Canada, which shall not be unreasonably withheld. Any income and expenses related to such use shall be shared between the Parties pursuant to the above-mentioned subsidiary arrangement. The latter shall also deal with related matters such as immunities, insurance coverage and security.

2. For the purpose of the activities described in paragraph 1 (*c*) of this article and when the facilities are made available to organizations or individuals who do not enjoy, in Canada, privileges and immunities comparable to those enjoyed by the Organization, the Organization is deemed to be involved in commercial activities and to have renounced, with respect to such activities which shall be located only in the conference block, the immunities referred to in articles 3 and 4 of the Headquarters Agreement. However, when ICAO makes available conference facilities to intergovernmental organizations working in the field of civil aviation and listed in annex A for meetings scheduled to take place in the context of the ICAO Council or Assembly, such use of conference facilities will be considered related to the work of ICAO.

Article VI

SECURITY

In consultation with the Government of Canada, the Organization shall provide on the headquarters premises internal security measures required by the nature, function and operations of the Organization.

Article VII

PURCHASE OF THE BUILDING

The Government of Canada reserves the right to exercise, at the end of the term and under the conditions specified in the Lease, the option to purchase the Building. In the case of exercise of such option, the Government of Canada shall transfer to the Organization twenty-five per cent (25%) of the ownership in the

Building corresponding to the pro-rata share of rental instalments actually paid by the Organization during the twenty (20) year rental period, subject to the obligation of the Organization to accept such a transfer and to reimburse the Government of Canada for twenty-five per cent (25%) of the purchase price, as set out in the Lease as applicable to the exercise of the purchase option. In case the Government of Canada does not wish to exercise the option for itself, it shall, at the written request of the Organization, exercise the option and transfer ownership of the Building to the Organization for its own use during a minimum period of twenty (20) years. In this case, the Organization shall make payment to the Government of Canada of the purchase price, as set out in the Lease as applicable to the exercise of the purchase option and of any cost associated with the transaction itself. In the event of the Organization purchasing the Building, all the obligations of the Government of Canada under this Agreement regarding accommodation of the Organization, in particular those under articles I and II thereof, shall cease, subject to the provisions of the Headquarters Agreement.

Article VIII

SETTLEMENT OF DISPUTES

Any dispute between the Organization and the Government of Canada concerning the interpretation or application of this Supplementary Agreement shall be settled in accordance with article 32 of the Headquarters Agreement.

Article IX

COURT ACTIONS

1. Without prejudice to the privileges and immunities of the Organization as defined in the Headquarters Agreement, the Government of Canada reserves its right to refer any cause of action, vis-à-vis a third party, related to the Lease or the premises to the competent courts of Canada.

2. The Organization shall, in such circumstances, facilitate the proper administration of justice and assist the Government of Canada by providing all relevant evidence.

Article X

FINAL CLAUSES

1. This Supplementary Agreement may be revised at the request of either of the Parties, subject to mutual consultation and mutual consent concerning any amendments. The Organization and the Government of Canada may conclude supplementary agreements amending the provisions of this Supplementary Agreement so far as this is deemed desirable.

2. This Supplementary Agreement shall enter into force on the date of signature, but with effect from 1 November 1996. It shall remain in force for a period of 20 years and one month, until 30 November 2016, in accordance with paragraph 2 of article I and thereafter for any period agreed between the Parties.

3. This Supplementary Agreement shall supersede the Supplementary Agreement signed on 12 and 16 September 1980.

IN WITNESS WHEREOF the respective representatives, being duly authorized thereto, have signed this Supplementary Agreement.

DONE in duplicate at Montreal on the 28th day of May 1999, in the English and French languages, both texts being equally authentic.

For the International Civil Aviation Organization:

(*Signed*) R. C. COSTA-PEREIRA

For the Government of Canada:

(*Signed*) Ghislaine RICHARD

ANNEX A

List of international organizations

1. *Organizations with which agreements have been concluded*

United Nations
International Atomic Energy Agency

2. *Specialized agencies*

Food and Agriculture Organization of the United Nations
International Fund for Agricultural Development
International Labour Organization
International Maritime Organization
International Monetary Fund
International Telecommunication Union
United Nations Educational, Scientific and Cultural Organization
United Nations Industrial Development Organization
Universal Postal Union
World Bank
World Health Organization
World Intellectual Property Organization
World Meteorological Organization

Including the following UN programmes and regional economic commissions:

United Nations programmes
- Office of the United Nations Disaster Relief Coordinator
- Office of the United Nations High Commissioner for Refugees
- United Nations Children's Fund
- United Nations Conference on Trade and Development
- United Nations Development Programme
- United Nations Environment Programme
- United Nations Institute for Training and Research
- United Nations Relief and Works Agency for Palestine Refugees in the Near East
- United Nations University
- World Food Programme

Regional economic commissions
- Economic and Social Commission for Asia and the Pacific
- Economic and Social Commission for Western Asia
- Economic Commission for Africa
- Economic Commission for Europe
- Economic Commission for Latin America and the Caribbean

3. *Intergovernmental organizations*

African Civil Aviation Commission
Agency for the Safety of Aerial Navigation in Africa and Madagascar
Arab Civil Aviation Commission
Central American Corporation for Air Navigation Services
Council of Europe
European Civil Aviation Conference
European Economic Community
European Organization for the Safety of Air Navigation
European Space Agency
International Criminal Police Organization—Interpol
International Hydrographic Organization
International Institute for the Unification of Private Law
Interstate Aviation Committee
Latin American Civil Aviation Commission
League of Arab States
Organization of American States
Organization of Central American States
Pan American Institute of Geography and History
World Tourism Organization
World Trade Organization

4. *Non-governmental organizations*

Aeronautical Radio Inc.
Aerospace Medical Association
Airports Council International
Institute of Air Transport
Institute of International Law
Inter-American Statistical Institute
International Academy of Aviation and Space Medicine
International Aeronautical Federation
International Airline Navigators Council
International Air Safety Association
International Air Transport Association
International Association of Aircraft Brokers and Agents
International Association for the Physical Sciences of the Ocean
International Automobile Federation
International Business Aviation Council
International Chamber of Commerce
International Commission on Illumination
International Coordinating Council of Aerospace industries Associations
International Council of Aircraft Owner and Pilot Associations
International Federation of Air Line Pilots' Associations
International Geographic Union
International Law Association
International Maritime Radio Committee
International Organization for Standardization

International Statistical Institute
International Touring Alliance
International Transport Workers' Federation
International Union of Aviation Insurers
International Union of Geodesy and Geophysics
International Union of Railways
Société internationale de télécommunications aéronautiques

ANNEX B

28 May 1999

Mr. R. C. Costa Pereira
Secretary-General International Civil Aviation Organization
Suite 12.15
999 University Street
Montreal, Quebec
H3C 5H7

Dear Mr. Costa Pereira:

Pursuant to the Supplementary Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization (ICAO), signed on 28 May 1999, I would like to propose the following arrangements setting out the details as to how the process envisaged by article V (I)(*c*) (i) and (ii) of the said Agreement will work in practice:

1. As soon as possible before the meetings envisaged in subparagraph (i) are being held, ICAO shall inform in writing (by fax or otherwise) the official of the Department of Public Works and Government Services working at the Canadian Mission to ICAO, with a copy to the regional administrator of the Department.

2. Such communication shall include:

(*a*) The date(s) and duration of the event;

(*b*) Its exact location;

(*c*) The approximate number of participants;

(*d*) What administrative (support staff and security) measures are envisaged by ICAO to ensure that all organization aspects will work properly;

(*e*) A confirmation of sufficient insurance coverage.

3. When the meetings envisaged in subparagraph (ii) are being considered by ICAO, that is before the conclusion of any contract with a third party, ICAO shall seek in writing Canada's concurrence by communicating with the above official from the Department of Public Works and Government Services. The ICAO communication shall cover the same points as above, if possible; otherwise the information sought in (*a*) to (*e*) shall be transmitted to Canada as soon as available. The Canadian response shall be sent back to the Chief, Conference Services, acting as ICAO representative. Furthermore, the Parties agree to share on a 50%/50% basis any net income created by the rental activities covered by this subparagraph (ii) of article V (1)(*c*).

4. Using the above channel of communication, ICAO shall swiftly inform Canada of any cancellation, or other change in plans further to a notification pursuant to subparagraph (i) or to a request for concurrence as per subparagraph (ii).

If you are agreeable to the above, I would appreciate your confirmation in writing. This letter and your positive reply will then constitute the subsidiary arrangement referred to in Article V (1)(*c*)(i) and (ii).

(*Signed*) Ghislaine RICHARD

5. WORLD HEALTH ORGANIZATION

(*a*) Agreement between the World Health Organization and the Universal Postal Union.[33] Signed at Geneva on 9 February 1999[34]

Preamble

The World Health Organization (hereinafter referred to as WHO) and

The Universal Postal Union (hereinafter referred to as UPU)

Wishing to coordinate their efforts within the framework of the missions assigned to them,

Recognizing that WHO is the United Nations specialized agency responsible for providing information, counsel and assistance in the field of health; promoting cooperation among scientific and professional groups which contribute to the advancement of health; and advancing work in the prevention and control of the international spread of diseases,

Recognizing that UPU is the United Nations specialized agency the purpose of which is to organize and improve the postal services and to promote, in this field, the safe transport of mail,

Recognizing that the desirability of UPU cooperating, within the field of its competence, with WHO in promoting, among other things:

(*a*) The safe transport of infectious substances;

(*b*) The safe transport of diagnostic specimens;

(*c*) The development of safer packaging systems at minimum cost;

(*d*) The development of simple labelling to aid compliance;

(*e*) The development of training programmes and awareness campaigns to introduce Recommendations in all countries,

Have agreed on the following:

Article I

MUTUAL CONSULTATION

1. WHO and UPU shall consult as needed on policy issues and matters of common interest for the purpose of realizing their objectives and coordinating their respective activities.

2. WHO and UPU shall exchange information on developments in any of their fields and projects that are of mutual interest and shall reciprocally take observations concerning such activities into consideration with a view to promoting effective coordination.

3. When appropriate, consultations shall be arranged at the required level between representatives of UPU and WHO to agree upon the most effective way in which to organize particular activities and to optimize the use of their resources in compliance with their respective mandates.

Article II

EXCHANGE OF INFORMATION

WHO and UPU shall combine their efforts to achieve the best use of all available information relevant to the transportation of infectious substances using the postal services.

Article III

RECIPROCAL REPRESENTATION

1. Appropriate arrangements may be made for the reciprocal representation at WHO and UPU meetings convened under their respective auspices and which consider matters in which the other Party has an interest or technical competence.

2. The Director-General of the International Bureau of UPU and the Director-General of WHO shall appoint a focal point with a view to ensuring the implementation of the provisions of the present Agreement.

Article IV

TECHNICAL COOPERATION

1. When in the interest of their respective activities, WHO and UPU shall seek each other's expertise to optimize the effects of such activities.

2. UPU shall endeavour, through its bodies as well as its Postal Security Action Group, to sensitize the national postal administration to the need to apply measures to ensure the safe transport of infectious substances.

3. By mutual agreement, UPU and WHO shall associate themselves in the development and execution of programmes, projects and activities relating particularly to the safe transport of infectious substances through the post.

4. Joint activities to be conducted under the present Agreement shall be subject to the approval of individual project documents by both Parties and shall be monitored under and agreed mechanism.

5. WHO and UPU shall cooperate in evaluating such programmes, projects and activities as have common interest subject to mutual agreement on a case-by-case basis.

Article V

ENTRY INTO FORCE, MODIFICATION AND DURATION

1. The present Agreement shall enter into force on the date on which it is signed by the Director-General of WHO and the Director-General of the International Bureau of UPU, subject to the approval of the UPU Council of Administration and the World Health Assembly.

2. The Agreement may be modified by mutual consent expressed in writing. It may also be revoked by either Party by giving six months' notice to the other Party.

IN WITNESS WHEREOF, the Director-General of the World Health Organization and the Director-General of the International Bureau of the Universal Postal Union sign the present Agreement in duplicate, in English and French, both texts being authentic, on the dates appearing under their respective signatures.

For the World Health Organization:

(*Signed*) Dr. Gro Harlem BRUNDTLAND
Director-General
9 February 1999

For the Universal Postal Union (International Bureau):

(*Signed*) Thomas E. LEAVEY
Director-General
9 February 1999

(*b*) Basic Agreement between the World Health Organization and the Government of Belarus for the establishment of technical advisory cooperative relations. Signed at Geneva on 20 May 1999[35]

The World Health Organization (hereinafter referred to as "the Organization") and

The Government of Belarus (hereinafter referred to as "the Government"),

Desiring to give effect to the resolutions and decisions of the United Nations and of the Organization relating to technical advisory cooperation, and to obtain mutual agreement concerning its purpose and scope as well as the responsibilities which shall be assumed and the services which shall be provided by the Government and the Organization,

Declaring that their mutual responsibilities shall be fulfilled in a spirit of friendly cooperation,

Have agreed as follows:

Article I

ESTABLISHMENT OF TECHNICAL ADVISORY COOPERATION

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

2. Such technical advisory cooperation shall be established in accordance with the relevant resolutions and decisions of the World Health Assembly, the Executive Board and other organs of the Organization.

3. Such technical advisory cooperation may consist of:

(*a*) Making available the services of advisers in order to render advice and cooperate with the Government or with other partners;

(*b*) Organizing and conducting seminars, training programmes demonstration projects, expert working groups and related activities in such places as may be mutually agreed;

(*c*) Awarding scholarships and fellowships or making other arrangements under which candidates nominated by the Government and approved by the Organization shall study or receive training outside the country;

(*d*) Preparing and executing pilot projects, tests, experiments or research in such places as may be mutually agreed upon;

(*e*) Carrying out any other form of technical advisory cooperation which may be agreed upon by the Government and the Organization.

4. (*a*) Advisers who are to render advice to and cooperate with the Government or with other parties shall be selected by the Organization in consultation with the Government; they shall be responsible to the Organization.

(*b*) In the performance of their duties, the advisers shall act in close consultation with the Government and with persons or bodies so authorized by the

Government, and shall comply with instructions from the Government as may be appropriate to the nature of their duties and the cooperation in view and as may be mutually agreed upon between the Government and the Organization.

(*c*) The advisers shall, in the course of their advisory work, make every effort to instruct any technical staff the Government may associate with them, in their professional methods, techniques and practices and in the principles on which these are based.

5. Any technical equipment or supplies which may be furnished by the Organization shall remain its property unless and until such time as title may be transferred in accordance with the policies determined by the World Health Assembly and existing at the date of transfer.

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization and its advisers, agents and employees and shall hold harmless the Organization and its advisers, agents and employees in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government and the Organization that such claims or liabilities arise from the gross negligence or wilful misconduct of such advisers, agents or employees.

Article II

PARTICIPATION OF THE GOVERNMENT IN TECHNICAL ADVISORY COOPERATION

1. The Government shall do everything in its power to ensure the effective development of the technical advisory cooperation.

2. The Government and the Organization shall consult together regarding the publication, as appropriate, of any finding and reports of advisers that may prove of benefit to other countries and to the Organization.

3. The Government shall actively collaborate with the Organization in the furnishing and compilation of findings, data, statistics and such other information as will enable the Organization to analyze and evaluate the results of the programmes of technical advisory cooperation.

Article III

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE ORGANIZATION

1. The Organization shall defray, in full or in part, as may be mutually agreed upon, the costs necessary to technical advisory cooperation which are payable outside the country, as follows:

(*a*) The salaries and subsistence (including duty travel per diem) of the advisers;

(*b*) The costs of transportation of the advisers during their travel to and from the point of entry into the country;

(*c*) The cost of any other travel outside the country;

(*d*) Insurance of the advisers;

(*e*) Purchase and transport to and from the point of entry into the country of any equipment or supplies provided by the Organization;

(*f*) Any other expenses outside the country approved by the Organization.

2. The Organization shall defray such expenses in local currency as are not covered the Government pursuant to article IV, paragraph I, of this Agreement.

Article IV

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE GOVERNMENT

1. The Government shall contribute to the cost of technical advisory cooperation by paying for, or directly furnishing, the following facilities and services:

(*a*) Local personnel services, technical and administrative, including the necessary local secretarial help, interpreter-translators and related assistance;

(*b*) The necessary office space and other premises;

(*c*) Equipment and supplies produced within the country;

(*d*) Transportation of personnel, supplies and equipment for official purposes within the country;

(*e*) Postage and telecommunications for official purposes;

(*f*) Facilities for receiving medical care and hospitalization by the international personnel.

2. The Government shall defray such portion of the expenses to be paid outside the country as are not covered by the Organization, and as may be mutually agreed upon.

3. In appropriate cases the Government shall put at the disposal of the Organization such labour, equipment, supplies and other services or property as may be needed for the execution of its work and as may be mutually agreed upon.

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government, insofar as it is not already bound to do so, shall apply to the Organization, its staff, funds, properties and assets the appropriate provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.

2. Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Agreement, shall be deemed to be officials within the meaning of the above Convention. The WHO Programme Coordinator/Representative appointed to the Government of Belarus shall be afforded the treatment provided for under section 21 of the said Convention.

Article VI

1. This Basic Agreement shall enter into force on the date of notification by the Republic of Belarus to the WHO Director-General on the completion of internal procedures necessary for its entry into force.

2. This Basic Agreement may be modified by agreement between the Organization and the Government, each of which shall give full and sympathetic consideration to any request by the other for such modification.

3. This Basic Agreement may be terminated by either Party upon written notice to the other Party and shall terminate sixty days after receipt of such notice.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the Organization and the Government respectively, have, on behalf of the Parties, signed the present Agreement on this 20th day of May 1999 in the English and Russian languages in two copies.

For the World Health Organization:
(*Signed*) G. E. ASVALL

For the Government of Belarus:
(*Signed*) Igor B. ZELENKEVICH

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6. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

Basic Cooperation Agreement between the United Nations Industrial Development Organization and the Government of the Republic of Ghana. Signed on 2 December 1999[36]

. . .

Article X

PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNIDO, including its organs, its property, funds, assets and its officials, including the UNIDO representative in Ghana and his/her staff in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations, except that if the Government has acceded in respect of UNIDO to the Convention on the Privileges and Immunities of the Specialized Agencies, the Government shall apply the provisions of the latter Convention, including any annex to that Convention applicable to UNIDO.

2. The UNIDO representative and his/her staff in the country shall be granted such additional privileges and immunities as may be necessary for the effective exercise of their official functions. In particular, the UNIDO representative shall enjoy the same privileges and immunities as the Government accords to diplomatic envoys in accordance with international law.

3. (*a*) Except as the Government and UNIDO may otherwise agree in project documents relating to specific projects, the Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of UNIDO, who are not covered by paragraphs 1 and 2 above, the same privileges and immunities as are granted to officials under section 18 or 19, respectively, of the Convention on the Privileges and Immunities of the United Nations or of the Specialized Agencies, as applicable.

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

(i) All papers and documents relating to a project in the possession or under the control of the persons referred to in subparagraph 3 (*a*) above shall be deemed to be documents belonging to UNIDO; and

(ii) Equipment, materials and supplies brought into, or purchased, or leased by those persons within the country for purposes of a project shall be deemed the property of UNIDO.

4. The expression "persons performing services" as used in articles X, XI and XIV of this Agreement includes operational experts, volunteers, consultants and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNIDO may retain to execute or to assist in the implementation of UNIDO assistance to a project and their employees. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such organizations or firms or their employees in any other instrument.

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7. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Exchange of letters constituting an agreement between the International Atomic Energy Agency and the Federative Republic of Brazil in connection with the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean. Signed at Vienna on 31 May and 30 July 1999[37]

I

LETTER FROM THE INTERNATIONAL ATOMIC ENERGY AGENCY

31 May 1999

Sir,

I have the honour to refer to the decision of the Board of Governors of the International Atomic Energy Agency of 15 June 1995, which authorized the Secretariat of the IAEA to confirm, through an exchange of letters with the relevant States of the Latin American and Caribbean region that, inter alia, the Agreement between Argentina, Brazil, the Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials and IAEA for the application of safeguards (hereinafter called "the Quadripartite Agreement") satisfies the requirement of the States parties under the Treaty on the Non-Proliferation of Nuclear Weapons ("the Non-Proliferation Treaty") and under the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean ("the Treaty of Tlatelolco") to conclude a comprehensive Safeguards Agreement.

The Government of the Federative Republic of Brazil ("Brazil") is party to the Treaty of Tlatelolco and to the Non-Proliferation Treaty, and has accepted an obligation, under both treaties, to sign and bring into force a Safeguard Agreement with the International Atomic Energy Agency. The Government of Brazil is also party to the Agreement on the Exclusively Peaceful Utilization of Nuclear Energy ("the SCCC Agreement"), which serves as a basis for the Quadripartite Agreement.

Against that background, I should like to propose the following:

1. Brazil and IAEA consider that the Quadripartite Agreement satisfies the obligation of Brazil under article 13 of the Treaty of Tlatelolco and article III of the Non-Proliferation Treaty.

2. Brazil and IAEA agree that the safeguards set forth in the Quadripartite Agreement shall also apply, as regards Brazil, in connection with the Treaty of Tlatelolco and the Non-Proliferation Treaty.

3. The provisions of the Quadripartite Agreement shall apply as long as Brazil is party to either the SCCC Agreement, the Treaty of Tlatelolco or the Non-Proliferation Treaty.

It is the Secretariat's understanding that your Government concurs with the statements in paragraphs 1 to 3 above. In that case, this letter and your affirmative reply shall, subject to approval by the Board of Governors of IAEA, constitute an agreement which shall enter into force on the date of its approval by the Board of Governors of IAEA.

(*Signed*) Mohamed ELBARADEI
Director General

II

LETTER FROM THE EMBASSY OF THE FEDERATIVE REPUBLIC OF BRAZIL IN VIENNA

30 July 1999

Sir,

I have the honour to acknowledge receipt of your note dated 31 May 1999, which reads as follows:

[See letter I]

2. In response, I have the honour to inform you that the terms of the above-mentioned letter are acceptable for the Brazilian Government.

(*Signed*) Sergio DE QUEIROZ DUARTE
Resident Representative

(*b*) Protocol Additional to the Agreement between the International Atomic Energy Agency and the Republic of Indonesia for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Signed at Vienna on 29 September 1999[38,*]

Whereas the Republic of Indonesia (hereinafter referred to as "Indonesia") and the International Atomic Energy Agency (hereinafter referred to as "the Agency") are parties to an Agreement for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as "the Safeguards Agreement"), which entered into force on 14 July 1980,

Aware of the desire of the international community to further enhance nuclear non-proliferation by strengthening the effectiveness and improving the efficiency of the Agency's safeguards system,

Recalling that the Agency must take into account in the implementation of safeguards the need to: avoid hampering the economic and technological development of Indonesia or international cooperation in the field of peaceful nuclear activities;

* Annexes are not published herein.

respect the health, safety, physical protection and other security provisions in force and the rights of the individuals; and take every precaution to protect commercial, technological and industrial secrets as well as other confidential information coming to its knowledge,

Whereas the frequency and intensity of activities described in this Protocol shall be kept to the minimum consistent with the objective of strengthening the effectiveness and improving the efficiency of Agency safeguards,

Now therefore Indonesia and the Agency have agreed as follows:

RELATIONSHIP BETWEEN THE PROTOCOL AND THE SAFEGUARDS AGREEMENT

Article 1

The provisions of the Safeguards Agreement shall apply to this Protocol to the extent that they are relevant to and compatible with the provisions of this Protocol. In case of conflict between the provisions of the Safeguards Agreement and those of this Protocol, the provisions of this Protocol shall apply.

PROVISION OF INFORMATION

Article 2

(*a*) Indonesia shall provide the Agency with a declaration containing:

(i) A general description of and information specifying the location of nuclear fuel cycle-related research and development activities not involving nuclear material carried out anywhere that are funded, specifically authorized or controlled by, or carried out on behalf of Indonesia;

(ii) Information identified by the Agency on the basis of expected gains in effectiveness or efficiency, and agreed to by Indonesia, on operational activities of safeguards relevance at facilities and at locations outside facilities where nuclear material is customarily used;

(iii) A general description of each building on each site, including its use and, if not apparent from that description, its contents. The description shall include a map of the site;

(iv) A description of the scale of operations for each location engaged in the activities specified in annex I to this Protocol;

(v) Information specifying the location, operational status and the estimated annual production capacity of uranium mines and concentration plants and thorium concentration plants, and the current annual production of such mines and concentration plants for Indonesia as a whole. Indonesia shall provide, upon request by the Agency, the current annual production of an individual mine or concentration plant. The provision of this information does not require detailed nuclear material accountancy;

(vi) Information regarding source material which has not reached the composition and purity suitable for fuel fabrication or for being isotopically enriched, as follows:

a. The quantities, the chemical composition, the use or intended use of such material, whether in nuclear or non-nuclear use, for each

location in Indonesia at which the material is present in quantities exceeding ten metric tons of uranium and/or twenty metric tons of thorium, and for other locations with quantities of more than one metric ton, the aggregate for Indonesia as a whole if the aggregate exceeds ten metric tons of uranium or twenty metric tons of thorium. The provision of this information does not require detailed nuclear material accountancy;

b. The quantities, the chemical composition and the destination of each export out of Indonesia of such material for specifically non-nuclear purposes in quantities exceeding:

(1) Ten metric tons of uranium, or for successive exports of uranium from Indonesia to the same State, each of less than ten metric tons, but exceeding a total of ten metric tons for the year;

(2) Twenty metric tons of thorium, or for successive exports of thorium from Indonesia to the same State, each of less than twenty metric tons, but exceeding a total or twenty metric tons for the year;

c. The quantities, chemical composition, current location and use or intended use of each import into Indonesia of such material for specifically non-nuclear purposes in quantities exceeding:

(1) Ten metric tons of uranium, or for successive imports of uranium into Indonesia each of less than ten metric tons, but exceeding a total of ten metric tons for the year;

(2) Twenty metric tons of thorium or for successive imports of thorium into Indonesia each of less than twenty metric tons, but exceeding a total of twenty metric tons for the year,

it being understood that there is no requirement to provide information on such material intended for a non-nuclear use once it is in its non-nuclear end-use form;

(vii) *a.* Information regarding the quantities, uses and locations of nuclear material exempted from safeguards pursuant to article 37 of the Safeguards Agreement;

b. Information regarding the quantities (which may be in the form of estimates) and uses at each location, of nuclear material exempted from safeguards pursuant to article 36(*b*) of the Safeguards Agreement but not yet in a non-nuclear end-use form, in quantities exceeding those set out in article 37 of the Safeguards Agreement. The provision of this information does not require detailed nuclear material accountancy;

(viii) Information regarding the location or further processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 on which safeguards have been terminated pursuant to article 11 of the Safeguards Agreement. For the purpose of this paragraph, "further processing" does not include repackaging of the waste or its further conditioning not involving the separation of elements, for storage or disposal;

(ix) The following information regarding specified equipment and non-nuclear material listed in annex II:

a. For each export out of Indonesia of such equipment and material: the identity, quantity, location of intended use in the receiving State and date or, as appropriate, expected date, of export;

b. Upon specific request by the Agency, confirmation by Indonesia, as importing State, of information provided to the Agency by another State concerning the export of such equipment and material to Indonesia;

(x) General plans for the succeeding ten-year period relevant to the development of the nuclear fuel cycle (including planned nuclear fuel cycle-related research and development activities) when approved by the appropriate authorities in Indonesia.

(*b*) Indonesia shall make every reasonable effort to provide the Agency with the following information:

(i) A general description of and information specifying the location of nuclear fuel cycle-related research and development activities not involving nuclear material which are specifically related to enrichment, reprocessing of nuclear fuel or the processing of intermediate or high-level waste containing plutonium, high-enriched uranium or uranium-233 that are carried out anywhere in Indonesia but which are not funded, specifically authorized or controlled by or carried out on behalf of Indonesia. For the purpose of this paragraph, "processing" of intermediate or high-level waste does not include repackaging of the waste or its conditioning not involving the separation of elements, for storage or disposal;

(ii) A general description of activities and the identity of the person or entity carrying out such activities, at locations identified by the Agency outside a site which the Agency considers might be functionally related to the activities of that site. The provision of this information is subject to a specific request by the Agency. It shall be provided in consultation with the Agency and in a timely fashion.

(*c*) Upon request by the Agency, Indonesia shall provide amplifications or clarifications of any information it has provided under this article, in so far as relevant for the purpose of safeguards.

Article 3

(*a*) Indonesia shall provide to the Agency the information identified in article 2(*a*)(i), (iii), (iv), (v), (vi)*a.*, (vii) and (x) and article 2(*b*)(i) within 180 days of the entry into force of this Protocol.

(*b*) Indonesia shall provide to the Agency, by 15 May of each year, updates of the information referred to in paragraph (*a*) above for the period covering the previous calendar year. If there has been no change to the information previously provided, Indonesia shall so indicate.

(*c*) Indonesia shall provide to the Agency, by 15 May of each year, the information identified in article 2(*a*)(vi)*b.* and *c.* for the period covering the previous calendar year.

(*d*) Indonesia shall provide to the Agency on a quarterly basis the information identified in article 2(*a*)(ix)*a*. This information shall be provided within sixty days of the end of each quarter.

(*e*) Indonesia shall provide to the Agency the information identified in article 2(*a*)(viii) 180 days before further processing is carried out and, by 15 May of each year, information on changes in location for the period covering the previous calendar year.

(*f*) Indonesia and the Agency shall agree on the timing and frequency of the provision of the information identified in article 2(*a*)(ii).

(*g*) Indonesia shall provide to the Agency the information in article 2(*a*)(ix)*b*. within sixty days of the Agency's request.

COMPLEMENTARY ACCESS

Article 4

The following shall apply in connection with the implementation of complementary access under article 5 of this Protocol:

(*a*) The Agency shall not mechanistically or systematically seek to verify the information referred to in article 2; however, the Agency shall have access to:

(i) Any location referred to in article 5(*a*)(i) or (ii) on a selective basis in order to assure the absence of undeclared nuclear material and activities;

(ii) Any location referred to in article 5(*b*) or (*c*) to resolve a question relating to the correctness and completeness of the information provided pursuant to article 2 or to resolve an inconsistency relating to that information;

(iii) Any location referred to in article 5(*a*)(iii) to the extent necessary for the Agency to confirm, for safeguards purposes, Indonesia's declaration of the decommissioned status of a facility or of a location outside facilities where nuclear material was customarily used.

(*b*) (i) Except as provided in subparagraph (ii) below, the Agency shall give Indonesia advance notice of access of at least 24 hours;

(ii) For access to any place on a site that is sought in conjunction with design information verification visits or ad hoc or routine inspections on that site, the period of advance notice shall, if the Agency so requests, be at least two hours but, in exceptional circumstances, it may be less than two hours.

(*c*) Advance notice shall be in writing and shall specify the reasons for access and the activities to be carried out during such access.

(*d*) In the case of a question or inconsistency, the Agency shall provide Indonesia with an opportunity to clarify and facilitate the resolution of the question or inconsistency. Such an opportunity will be provided before a request for access, unless the Agency considers that delay in access would prejudice the purpose for which the access is sought. In any event, the Agency shall not draw any conclusions about the question or inconsistency until Indonesia has been provided with such an opportunity.

(*e*) Unless otherwise agreed to by Indonesia, access shall only take place during regular working hours.

(*f*) Indonesia shall have the right to have Agency inspectors accompanied during their access by representatives of Indonesia, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

Article 5

Indonesia shall provide the Agency with access to:

(*a*) (i) Any place on a site;

(ii) Any location identified by Indonesia under article 2(*a*)(v)-(viii);

(iii) Any decommissioned facility or decommissioned location outside facilities where nuclear material was customarily used;

(*b*) Any location identified by Indonesia under article 2(*a*)(i), article 2(*a*)(iv), article 2(*a*)(ix)*b*. or article 2(*b*), other than those referred to in subparagraph (*a*)(i) above, provided that if Indonesia is unable to provide such access, Indonesia shall make every reasonable effort to satisfy Agency requirements, without delay, through other means;

(*c*) Any location specified by the Agency, other than locations referred to in subparagraphs (*a*) and (*b*) above, to carry out location-specific environmental sampling, provided that if Indonesia is unable to provide such access, Indonesia shall make every reasonable effort to satisfy Agency requirements, without delay, at adjacent locations or through other means.

Article 6

When implementing article 5, the Agency may carry out the following activities:

(*a*) For access in accordance with article 5(*a*)(i) or (iii): visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; application of seals and other identifying and tamper indicating devices specified in Subsidiary Arrangements; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board of Governors (hereinafter referred to as "the Board") and following consultations between the Agency and Indonesia;

(*b*) For access in accordance with article 5(*a*)(ii): visual observation; item counting of nuclear material; non-destructive measurements and sampling; utilization of radiation detection and measurement devices; examination of records relevant to the quantities, origin and disposition of the material; collection of environmental samples; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board and following consultations between the Agency and Indonesia;

(*c*) For access in accordance with article 5(*b*): visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; examination of safeguards-relevant production and shipping records; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board and following consultations between the Agency and Indonesia;

(*d*) For access in accordance with article 5(*c*): collection of environmental samples and, in the event the results do not resolve the question or inconsistency at the location specified by the Agency pursuant to article 5(*c*), utilization at that location of visual observation, radiation detection and measurement devices and, as agreed by Indonesia and the Agency, other objective measures.

Article 7

(*a*) Upon request by Indonesia, the Agency and Indonesia shall make arrangements for managed access under this Protocol in order to prevent the dissemination of proliferation-sensitive information, to meet safety or physical protection requirements or to protect proprietary or commercially sensitive information. Such arrangements shall not preclude the Agency from conducting activities necessary to provide credible assurance of the absence of undeclared nuclear material and activities at the location in question, including the resolution of a question relating to the correctness and completeness of the information referred to in article 2 or of an inconsistency relating to that information.

(*b*) Indonesia may, when providing the information referred to in article 2, inform the Agency of the places at a site or location at which managed access may be applicable.

(*c*) Pending the entry into force of any necessary Subsidiary Arrangements, Indonesia may have recourse to managed access consistent with the provisions of paragraph (*a*) above.

Article 8

Nothing in this Protocol shall preclude Indonesia from offering the Agency access to locations in addition to those referred to in articles 5 and 9 or from requesting the Agency to conduct verification activities at a particular location. The Agency shall, without delay, make every reasonable effort to act upon such a request.

Article 9

Indonesia shall provide the Agency with access to locations specified by the Agency to carry out wide-area environmental sampling, provided that if Indonesia is unable to provide such access it shall make every reasonable effort to satisfy Agency requirements at alternative locations. The Agency shall not seek such access until the use of wide-area environmental sampling and the procedural arrangements therefor have been approved by the Board and following consultations between the Agency and Indonesia.

Article 10

The Agency shall inform Indonesia of:

(*a*) The activities carried out under this Protocol, including those in respect of any questions or inconsistencies the Agency had brought to the attention of Indonesia, within sixty days of the activities being carried out by the Agency;

(*b*) The results of activities in respect of any questions or inconsistencies the Agency had brought to the attention of Indonesia, as soon as possible but in any case within thirty days of the results being established by the Agency;

(*c*) The conclusions it has drawn from its activities under this Protocol. The conclusions shall be provided annually.

DESIGNATION OF AGENCY INSPECTORS

Article 11

(*a*) (i) The Director General shall notify Indonesia of the Board's approval of any Agency official as a safeguards inspector. Unless Indonesia advises

the Director General of its rejection of such an official as an inspector for Indonesia within three months of receipt of notification of the Board's approval, the inspector so notified to Indonesia shall be considered designated to Indonesia.

(ii) The Director General, acting in response to a request by Indonesia or on his own initiative, shall immediately inform Indonesia of the withdrawal of the designation of any official as an inspector for Indonesia.

(*b*) A notification referred to in paragraph (*a*) above shall be deemed to be received by Indonesia seven days after the date of the transmission by registered mail of the notification by the Agency to Indonesia.

VISAS

Article 12

Indonesia shall, within one month of the receipt of a request therefor, provide the designated inspector specified in the request with appropriate multiple entry/exit and/or transit visas, where required, to enable the inspector to enter and remain on the territory of Indonesia for the purpose of carrying out his/her functions. Any visas required shall be valid for at least one year and shall be renewed, as required, to cover the duration of the inspector's designation to Indonesia.

SUBSIDIARY ARRANGEMENTS

Article 13

(*a*) Where Indonesia or the Agency indicates that it is necessary to specify in Subsidiary Arrangements how measures laid down in this Protocol are to be applied, Indonesia and the Agency shall agree on such Subsidiary Arrangements within ninety days of the entry into force of this Protocol or, where the indication of the need for such Subsidiary Arrangements is made after the entry into force of this Protocol, within ninety days of the date of such indication.

(*b*) Pending the entry into force of any necessary Subsidiary Arrangements, the Agency shall be entitled to apply the measures laid down in this Protocol.

COMMUNICATIONS SYSTEMS

Article 14

(*a*) Indonesia shall permit and protect free communications by the Agency for official purposes between Agency inspectors in Indonesia and Agency headquarters and/or regional offices, including attended and unattended transmission of information generated by Agency containment and/or surveillance or measurement devices. The Agency shall have, in consultation with Indonesia, the right to make use of internationally established systems of direct communications, including satellite systems and other forms of telecommunication, not in use in Indonesia. At the request of Indonesia or the Agency, details of the implementation of this paragraph with respect to the attended or unattended transmission of information generated by Agency containment and/or surveillance or measurement devices shall be specified in the Subsidiary Arrangements.

(*b*) Communication and transmission of information as provided for in paragraph (*a*) above shall take due account of the need to protect proprietary or com-

mercially sensitive information or design information which Indonesia regards as being of particular sensitivity.

PROTECTION OF CONFIDENTIAL INFORMATION

Article 15

(*a*) The Agency shall maintain a stringent regime to ensure effective protection against disclosure of commercial, technological and industrial secrets and other confidential information coming to its knowledge, including such information coming to the Agency's knowledge in the implementation of this Protocol.

(*b*) The regime referred to in paragraph (*a*) above shall include, among others, provisions relating to:

(i) General principles and associated measures for the handling of confidential information;

(ii) Conditions of staff employment relating to the protection of confidential information;

(iii) Procedures in cases of breaches or alleged breaches of confidentiality.

(*c*) The regime referred to in paragraph (*a*) above shall be approved and periodically reviewed by the Board.

ANNEXES

Article 16

(*a*) The annexes to this Protocol shall be an integral part thereof. Except for the purposes of amendment of the annexes, the term "Protocol" as used in this instrument means the Protocol and the annexes together.

(*b*) The list of activities specified in annex I, and the list of equipment and material specified in annex II, may be amended by the Board upon the advice of an open-ended working group of experts established by the Board. Any such amendment shall take effect four months after its adoption by the Board.

ENTRY INTO FORCE

Article 17

(*a*) This Protocol shall enter into force upon signature by the representatives of Indonesia and the Agency.

(*b*) The Director General shall promptly inform all States members of the Agency of any declaration of provisional application of, and of the entry into force of, this Protocol.

DEFINITIONS

Article 18

For the purpose of this Protocol:

(*a*) "Nuclear fuel cycle–related research and development activities" means those activities which are specifically related to any process or system development aspect of any of the following:

—Conversion of nuclear material,

—Enrichment of nuclear material,

—Nuclear fuel fabrication,

—Reactors,

—Critical facilities,

—Reprocessing of nuclear fuel,

—Processing (not including repackaging or conditioning not involving the separation of elements, for storage or disposal) of intermediate- or high-level waste containing plutonium, high-enriched uranium or uranium-233,

but do not include activities related to theoretical or basic scientific research or to research and development on industrial radioisotope applications, medical, hydrological and agricultural applications, health and environmental effects and improved maintenance;

(*b*) "Site" means that area delimited by Indonesia in the relevant design information for a facility, including a closed-down facility, and in the relevant information on a location outside facilities where nuclear material is customarily used, including a closed-down location outside facilities where nuclear material was customarily used (this is limited to locations with hot cells or where activities related to conversion, enrichment, fuel fabrication or reprocessing were carried out). It shall also include all installations, co-located with the facility or location, for the provision or use of essential services, including: hot cells for processing irradiated materials not containing nuclear material; installations for the treatment, storage and disposal of waste, and buildings associated with specified activities identified by Indonesia under article 2(*a*)(iv) above;

(*c*) "Decommissioned facility" or "decommissioned location outside facilities" means an installation or location at which residual structures and equipment essential for its use have been removed or rendered inoperable so that it is not used to store and can no longer be used to handle, process or utilize nuclear material;

(*d*) "Close-down facility" or "closed-down location outside facilities" means an installation or location where operations have been stopped and the nuclear material removed but which has not been decommissioned;

(*e*) "High-enriched uranium" means uranium containing 20 per cent or more of the isotope uranium-235;

(*f*) "Location-specific environmental sampling" means the collection of environmental samples (e.g., air, water, vegetation, soil, smears) at, and in the immediate vicinity of, a location specified by the Agency for the purpose of assisting the Agency in drawing conclusions about the absence of undeclared nuclear material or nuclear activities at the specified location;

(*g*) "Wide-area environmental sampling" means the collection of environmental samples (e.g., air, water, vegetation, soil, smears) at a set of locations specified by the Agency for the purpose of assisting the Agency in drawing conclusions about the absence of undeclared nuclear material or nuclear activities over a wide area;

(*h*) "Nuclear material" means any source or any special fissionable material as defined in article XX of the Statute. The term source material shall not be interpreted as applying to ore or ore residue. Any determination by the Board under arti-

cle XX of the Statute of the Agency after the entry into force of this Protocol which adds to the materials considered to be source material or special fissionable material shall have effect under this Protocol only upon acceptance by Indonesia;

(i) "Facility" means:

(ii) A reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation; or

(iii) Any location where nuclear material in amounts greater than one effective kilogram is customarily used;

(*j*) "Location outside facilities" means any installation or location, which is not a facility, where nuclear material is customarily used in amounts of one effective kilogram or less.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by, respectively, the Government of the Republic of Indonesia and the Board of Governors of the International Atomic Energy Agency, have signed the Additional Protocol.

DONE at Vienna on this 29th day of September 1999 in duplicate in the English language.

For the Republic of Indonesia:

(*Signed*) R. I. Rhousdy SOERIAATMADJA
Permanent Representative

For the International Atomic Energy Agency:

(*Signed*) Mohamed ELBARADEI
The Director General

NOTES

[1] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

[2] For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General of the United Nations: Status as at 31 December 2000* (United Nations publication, Sales No. E.00.V.2).

[3] Came into force on 11 February 1999 by signature.

[4] S/21360 and S/22464.

[5] Came into force provisionally on 12 February 1999.

[6] Came into force on 23 February 1999 by signature.

[7] Came into force on 3 May 1999.

[8] Came into force on 5 May 1999 by signature.

[9] Came into force on 7 June 1999 by signature.

[10] Came into force on 3 June 1999 by signature.

[11] Came into force on 8 June 1999 by signature.

[12] Came into force on 9 June 1999 by signature.

[13] Came into force on 10 June 1999 by signature.

[14] Came into force on 18 June 1999 by signature.

[15] Came into force on 2 July 1999 by signature.

[16] Came into force on 6 July 1999 by signature.

[17] Came into force on 6 March 2001.

[18] Came into force on 22 August 1999.

[19] Came into force on 24 August 1999 by signature.

[20] Came into force retroactively on 1 January 1999.

[21] Came into force on 26 August 1999 by signature.

[22] Came into force on 15 October 1999 by signature.

[23] Came into force on 17 November 1999 by signature.

[24] Came into force on 10 February 2000.

[25] Came into force on 30 June 1999 by signature.

[26] Came into force on 4 February 1999 by signature.

[27] United Nations, *Treaties Series*, vol. 33, p. 43.

[28] 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).

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

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

[31] Came into force on 5 October 1999.

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

[33] WHO document A52/26.

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

[35] Came into force on 20 May 1999.

[36] Not yet in force.

[37] Came into force on 20 September 1999.

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

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

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

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

1. DISARMAMENT AND RELATED MATTERS[1]

(*a*) Nuclear disarmament and non-proliferation issues

During 1999, differences among Member States persisted in all disarmament forums—the United Nations Conference on Disarmament, the United Nations Disarmament Commission and the First Committee of the General Assembly—concerning issues related to nuclear disarmament.

At the bilateral level, the United States of America and the Russian Federation continued to reduce their nuclear arsenals on the basis of the START treaties.[2] No new negotiations were begun, although some discussions on START III[3] were carried out in the second half of the year.

Preparations for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons of 1968[4] continued at the third session of the Preparatory Committee; however, the Committee was unable to agree on any substantive recommendations to the Review Conference, and adopted decisions only on procedural issues.

Regarding IAEA safeguards, as of the end of the year, the 1997 Model Protocol Additional to Safeguards Agreements[5] had been signed by 45 States, including four nuclear-weapon States and Cuba, and was in force in eight States.[6] The Model Protocol provides IAEA with the legal authority to implement a more effective safeguards system to detect and verify possible non-peaceful nuclear activities in a State at an early stage.

When the United Nations Special Commission (UNSCOM) suspended, as of mid-December 1998, its Security Council–mandated activities related to verifying Iraq's declarations concerning full, final and complete disclosure of its chemical, biological and missile programmes, the monitoring of Iraq's nuclear weapons programmes by IAEA also was suspended. The Agency's inability to implement its mandate in Iraq, under the relevant Security Council resolutions, rendered it unable to provide any assurances that Iraq was in compliance with its obligations under those resolutions.

Regarding nuclear terrorism, the General Conference of IAEA, at its forty-third session, adopted a resolution entitled "Measures against Illicit Trafficking in Nuclear Materials and Other Radioactive Sources",[7] in which it welcomed the activities in the fields of prevention, detection and response undertaken by its Secretariat, and invited all States to participate in the illicit trafficking database programme on a voluntary basis. The General Assembly, in its resolution 54/110 of 9 December

1999, decided that the Ad Hoc Committee charged with elaborating a draft international convention for the suppression of acts of nuclear terrorism[8] should continue its work and should address the means of further developing a comprehensive legal framework of conventions dealing with international terrorism.[9]

Questions related to nuclear safety and radioactive waste continued to be of concern to a great number of Member States and were the subject of a number of resolutions of the General Conference of IAEA, e.g., on "The safety of radiation sources and the security of radiological materials"; "Safety of transport of radioactive materials"; and "The radiological protection of patients".[10] The first Review Meeting of the Contracting Parties to the 1994 Convention on Nuclear Safety[11] was held at Vienna in April 1999 and featured presentation of national reports of States parties on steps and measures they were taking to implement the Convention.

Consideration by the General Assembly

The General Assembly, at its fifty-fourth session, on the recommendation of the First Committee, took action on 12 draft resolutions dealing with nuclear disarmament, adopting them on 1 December 1999.

These resolutions included resolution 54/54 D, entitled "Nuclear disarmament with a view to the ultimate elimination of nuclear weapons"; resolution 54/54 K, entitled "Reducing nuclear danger"; resolution 54/52, entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons"; resolution 54/63, entitled "Comprehensive Nuclear-Test-Ban Treaty";[12] resolution 54/54 A entitled "Preservation of and compliance with the Treaty on the Limitation of Anti-Ballistic Missile Systems";[13] resolution 54/54 Q, entitled "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons"; and resolution 54/54 C, entitled "Prohibition of the dumping of radioactive wastes".

(*b*) Biological and chemical weapons conventions

Efforts to strengthen the 1972 Biological Weapons Convention[14] through the elaboration of a protocol on verification and confidence-building measures continued throughout the year in the framework of the Ad Hoc Group, with all States parties agreeing that the completion of the work was vital and should be done by 2000.

The Organization for the Prohibition of Chemical Weapons (OPCW) continued its activities under the 1993 Chemical Weapons Convention,[15] the Conference of States Parties holding its fourth session at The Hague from 28 June to 2 July 1999. The Conference approved the draft relationship agreement between the United Nations and OPCW, and also approved model facility agreements for chemical weapons storage and for chemical weapons production facilities. In July 1999, following the departure of UNSCOM from Iraq the previous year, the United Nations team, including OPCW inspectors, closed its laboratory, destroying 250 millilitres of mustard gas and various chemical weapon agent reference standards.

UNSCOM was unable to carry out its inspection activities in connection with the proscribed biological, chemical and missile programmes in Iraq, and at the end of the year the Security Council established a new body, the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), to carry out the mandate entrusted to UNSCOM.

Consideration by the General Assembly

Resolutions concerning the Biological Weapons Convention (resolution 54/61), and on the implementation of the Chemical Weapons Convention (resolution 54/54 E) were adopted, on the recommendation of the First Committee, on 1 December 1999.

(*c*) Conventional weapons issues

In 1999, a number of United Nations organs continued to be involved in the question of small arms and light weapons, notably the Security Council, the General Assembly, the Economic and Social Council and the United Nations Secretariat. On 17 September 1999, the Security Council adopted resolution 1265 (1999) on the protection of civilians in armed conflict, and at a ministerial meeting held on 24 September on the question of small arms in the context of the challenges facing the international community in that regard, the Council, in considering the implementation of arms embargoes, noted the growing attention paid within the United Nations system to the problems associated with the destabilizing accumulation of small arms, welcomed the various initiatives to address the issue and called for effective implementation of arms embargoes imposed by its relevant resolutions.[16]

The United Nations Register of Conventional Arms and the United Nations system for the standardized reporting of military expenditures continued to contribute to building transparency in military matters. However, differences among Member States regarding further development of the Register continued to be reflected in the deliberations of the General Assembly and the Conference on Disarmament.

With respect to anti-personnel mines, the 1997 Mine Ban Convention[17] entered into force on 1 March 1999 after receiving the required number of ratifications. Subsequently, the First Meeting of States Parties was convened in Maputo, and an inter-sessional work programme was developed. Also, the States parties to the 1996 Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices[18] held their first annual conference in December.

Consideration by the General Assembly

In 1999, the General Assembly took action, on the recommendation of the First Committee, on nine draft resolutions and one draft decision. Resolutions adopted by the Assembly included resolution 54/54 J, entitled "Assistance to States for curbing the illicit traffic in small arms and collecting them"; resolution 54/43, entitled "Objective information on military matters, including transparency of military expenditures"; resolution 54/54 B, entitled "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction"; and resolution 54/58, entitled "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".[19] The Assembly also adopted decision 54/419, entitled "Review of the implementation of the Declaration on the Strengthening of International Security".[20]

(*d*) Regional disarmament

During the year, efforts continued towards consolidating the existing nuclear-weapon-free zones or towards creating a new one. The increasing number of intra-State conflicts, especially in Africa, underlined the urgent need for measures to curb

the proliferation of conventional weapons, especially small arms and light weapons, and to curtail the illicit traffic of such weapons.

The vast majority of States, especially those belonging to nuclear-weapon-free zones, supported the concept during the debates in the Conference on Disarmament, the Disarmament Commission, the First Committee of the General Assembly and the Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on Non-Proliferation of Nuclear Weapons. No major developments occurred with respect to the 1967 Treaty of Tlatelolco[21] or the 1996 Treaty of Pelindaba.[22] The latter had not received the requisite number of ratifications to enter into force as of the end of the year. While there was considerable progress in negotiating a treaty on a Central Asian nuclear-weapon-free-zone, no progress was made on the proposal for the establishment of a zone in the Middle East. With respect to the 1995 Bangkok Treaty, formally known as the Treaty on the South-East Asia Nuclear Weapon-Free Zone,[23] efforts focused on encouraging the nuclear-weapon States to adhere to the 1995 Protocol,[24] by which they would recognize the nuclear-weapon-free status of the region. Consultations were held between members of the Association of South-East Asian Nations (ASEAN) and various nuclear-weapon States regarding the adherence of the latter to the Protocol to the Bangkok Treaty.

As in previous years, the Organization of African Unity (OAU) played the primary role in addressing the various political disputes and armed conflicts that have spread throughout the continent. At the thirty-fifth summit of OAU, held in Algiers in July 1999, member States adopted three decisions related to disarmament: on the illicit proliferation, circulation and trafficking of small arms and light weapons; on the First Meeting of States Parties to the 1997 Mine Ban Convention; and on the United Nations Regional Centre for Peace and Disarmament in Africa.

There were several developments during the year that had an impact on European security. Following the breakdown of the Paris negotiations and the failure to reach a political solution to the dispute over Kosovo, the 19 members of the North Atlantic Treaty Organization (NATO) unanimously agreed to undertake air attacks against Yugoslavia, and the NATO Secretary-General issued an order on 24 March to launch the attack; this was the first military action undertaken by NATO against a sovereign State without authorization by the Secretary-General of the United Nations. After 76 days of the air campaign, Yugoslavia agreed to accept the principles set out in the G-8 foreign ministers' paper of 6 May and the principles set out in the paper presented to it on 2 June in Belgrade.[25] The Security Council on 10 June, by its resolution 1244 (1999) authorized a civil and security presence in Kosovo, on the basis of which the Secretary-General established the United Nations Interim Administration Mission in Kosovo (UNMIK), and "the international security presence with substantial North Atlantic Treaty participation", known as KFOR, was deployed.

Concerning the 1990 Treaty on Conventional Armed Forces in Europe (CFE Treaty),[26] the Agreement on the Adaptation of the CFE Treaty[27] was signed on 18 November at the Istanbul Summit. A CFE Final Act also was signed[28] containing a confirmation by the Russian Federation of its commitment to all provisions of the Treaty. The Adaptation Agreement updates the 1990 Treaty to create a new, highly stable transparent set of limitations on conventional forces, and to bring it in line with the current European security environment.

The Organization for Security and Cooperation in Europe (OSCE) Forum for Security Cooperation adopted on 16 November in Istanbul the Vienna Document 1999 of the Negotiations on Confidence and Security-Building Measures[29] which

built upon and added to such measures contained in the previous documents on the subject.[30]

The European Union (EU) continued through its Joint Action[31] to contribute to combating the destabilizing accumulation and spread of small arms and light weapons, and to cooperate with the United Nations, NATO and other regional organizations in promoting transparency, arms control and disarmament and mine clearance.

Consideration by the General Assembly

A number of resolutions concerning nuclear-weapon-free zones were adopted by the General Assembly, on the recommendation of the First Committee, during the fifty-fourth session, notably resolution 54/54 L, entitled "Nuclear-weapon-free southern hemisphere and adjacent areas" on 1 December. On the same date, the General Assembly adopted several resolutions on regional conventional disarmament, including resolution 54/54 A, entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa"; resolution 54/59, entitled "Strengthening of security and cooperation in the Mediterranean region"; and resolution 54/62, entitled "Maintenance of international security—stability and development of South-Eastern Europe".

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Membership in the United Nations

During the year, three additional States were admitted as Members of the United Nations on 14 September 1999:

State	*General Assembly resolution*
Kiribati	54/1
Nauru	54/2
Tonga	54/3

(*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-eighth session at the United Nations Office at Vienna from 1 to 5 March 1999.[32]

Regarding the agenda item entitled "Question of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", the Legal Subcommittee again suspended its Working Group on the matter, pending the results of the work of the Scientific and Technical Subcommittee.

The Legal Subcommittee re-established the Working Group on the item entitled "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union". The Work-

ing Group agreed that the Secretariat, in cooperation with ITU, should prepare an update of the working paper prepared by the Secretariat in cooperation with ITU entitled "An analysis of the compatibility of the approach contained in the working paper entitled 'Some considerations concerning the utilization of the geostationary orbit' with the existing regulatory procedures of the International Telecommunication Union relating to the use of the geostationary orbit"[33] and an update of an earlier conference room paper[34] containing a compendium of relevant sections and/or documents that would contain further documentation on the geostationary orbit, with a view to continuing the examination of a working paper submitted by Colombia to the Legal Subcommittee at the thirty-sixth session.[35]

Concerning the item entitled "Review of the status of the five international legal instruments governing outer space",[36] the Legal Subcommittee established a working group on the item and agreed, inter alia, that States should be invited to consider making a declaration in accordance with paragraph 3 of General Assembly resolution 2777 (XXVI) of 29 November 1971, thereby binding themselves on a reciprocal basis to the decisions of the Claims Commission established in the event of a dispute in terms of the provisions of the Convention on International Liability for Damage Caused by Space Objects.

With respect to the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III), the Subcommittee considered, inter alia, the draft report of UNISPACE III[37] and provided comments[38] on the subsection entitled "International space law" that would be reflected in the text of the draft report to be considered by the Conference.

The Committee on the Peaceful Uses of Outer Space, at its forty-second session, held at the United Nations Office at Vienna from 14 to 16 June 1999, took note of the report of the Legal Subcommittee on the work of the thirty-eighth session.[39] Regarding the future agenda of the Legal Subcommittee, the Committee agreed that a new item entitled "Review of the concept of the 'launching State'" should be included in the agenda of the Legal Subcommittee. Furthermore, the Committee considered the proposal submitted to the Legal Subcommittee by Germany, on behalf of Austria, Canada, France, Greece, India, the Netherlands, Sweden and the United States of America, in a working paper entitled "Revision of the agenda of the Legal Subcommittee".[40] Following discussion of the proposal, the Committee agreed to adopt a revised agenda structure for the Legal Subcommittee and the agenda for its thirty-ninth session, in 2000.[41]

Consideration by the General Assembly

On the recommendation of the Special Political and Decolonization Committee (Fourth Committee), the General Assembly on 6 December 1999 adopted resolution 54/67, in which it welcomed the new approach taken by the Committee in composing the agenda of the Legal Subcommittee, and endorsed the recommendation of the Committee that the Subcommittee, at its thirty-ninth session, taking into account the concerns of all countries, in particular those of developing countries:

(*a*) Consider the following as regular agenda items:

(i) General exchange of views;

(ii) Status of the international treaties governing the uses of outer space;

(iii) Information on the activities of international organizations relating to space law;

(iv) 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;

(*b*) Continue its consideration of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, as a single issue and item for discussion;

(*c*) Consider the following in accordance with the work plans adopted by the Committee:

(i) Review of the status of the five international legal instruments governing outer space;

(ii) Review of the concept of the "launching State".

In its resolution 54/68 of 6 December 1999, the General Assembly took note of the report of UNISPACE III,[42] which was held at Vienna in July 1999, and called upon all concerned to implement the recommendations contained in the report. The General Assembly furthermore endorsed the resolution entitled "The Space Millennium: Vienna Declaration on Space and Human Development",[43] and urged the effective implementation of the Declaration.

(*c*) Comprehensive review of the whole question of peacekeeping operations in all their aspects

The General Assembly, in its resolution 54/81 of 6 December 1999, adopted on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), welcomed the report of the Special Committee on Peacekeeping Operations,[44] and endorsed the proposals, recommendations and conclusions of the Special Committee, contained in paragraphs 43 to 130 of its report. The Assembly further reiterated that those Member States that would become personnel contributors to United Nations peacekeeping operations in years to come or that would participate in the future in the Special Committee for three consecutive years as observers shall, upon request in writing to the Chairman of the Special Committee, become members at the following session of the Special Committee.

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

(*a*) Environmental questions

Twentieth session of the Governing Council of the United Nations Environment Programme[45]

The Governing Council held its twentieth session at the headquarters of the United Nations Environment Programme at Nairobi, from 1 to 5 February 1999. During the session the Council adopted a number of decisions, notably decision 20/3, in which it took note with appreciation of the progress made in the further

implementation of the Programme for the Development and Periodic Review of Environmental Law for the 1990s,[46] including the recently concluded study on dispute avoidance and dispute settlement in international environmental law.[47] In decision 20/4, the Governing Council requested the Executive Director, in consultation with Governments and relevant international organizations, to seek appropriate ways of building capacity in and enhancing access to environmental information, public participation in decision-making and access to justice in environmental matters, and also requested the Executive Director to study, in that regard, various models of national legislation, policies and guidelines. In its decision 20/5, the Council took note of the recommendations of the Joint Advisory Committee of UNEP and the International Referral System for Sources of Environmental Information (INFOTERRA) on the reform of the global environmental information exchange network, as contained in the Washington Statement of the Advisory Committee,[48] and also noted the new role of INFOTERRA as the UNEP global advocate of the public-right-to-know principle, to be carried out through a new structure governing the future operations of INFOTERRA.

Moreover, in its decision 20/9, the UNEP Governing Council requested the Executive Director to continue efforts to fulfil the ten commitments made by the United Nations Environment Programme at the Fourth World Conference on Women as its contribution to meet the global priorities for the advancement of women by 2000, and to carry out more activities in the programme of work targeted at women, and also requested the Executive Director to strengthen efforts to assist Governments in empowering women to participate in the decision-making process on environmental matters and in providing them with information on the environment.

Consideration by the General Assembly

At its fifty-fourth session, the General Assembly, on the recommendation of the Second Committee, adopted a number of resolutions and decisions in the area of the environment, on 22 December 1999, notably resolution 54/216, concerning the report of the Governing Council of UNEP, in which the Assembly welcomed the report of the Governing Council on its twentieth session, and also welcomed the progress in the negotiation of an international legally binding instrument for implementing international action on certain persistent organic pollutants with a view to its earlier conclusion. And in its resolution 54/218, entitled "Implementation of and follow-up to the outcome of the United Nations Conference on Environment and Development and the nineteenth special session of the General Assembly", the Assembly stressed the need to accelerate the full implementation of Agenda 21[49] and the Programme for the Further Implementation of Agenda 21.[50]

Furthermore, in its resolution 54/221, the General Assembly took note of the results of the fourth meeting of the Conference of the Parties to the 1992 Convention on Biologicl Diversity,[51] and recognized the importance of the adoption of a protocol on biosafety at the resumed session of the first extraordinary meeting of the Conference of the Parties, to be held in January 2000. The Assembly also welcomed decision IV/15, adopted by the Conference of the Parties at its fourth meeting, stressing the need to ensure consistency in implementing the Convention on Biological Diversity and World Trade Organization agreements, including the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement),[52] with a view to promoting increased mutual supportiveness and integration of biological diversity concerns and the protection of intellectual property rights. In its resolution 54/222, the Assembly encouraged Member States that had not ratified

or acceded to the 1997 Kyoto Protocol[53] to the 1992 United Nations Framework Convention on Climate Change[54] to do so with a view to bringing it into force. Furthermore, by its resolution 54/223, the General Assembly welcomed the convening, in November 1999, of the third session of the Conference of the Parties to the 1994 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa.[55]

(*b*) Population and development

The General Assembly, by its decision 54/445 of 22 December 1999, adopted on the recommendation of the Second Committee, took note of the report of the Secretary-General on the twenty-first special session of the General Assembly for an overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development.[56]

(*c*) Economic issues

During the fifty-fourth session, the General Assembly, on 22 December 1999, on the recommendation of the Second Committee, adopted a number of resolutions and decisions concerning economic issues, notably resolution 54/197, in which it took note with appreciation of the report of the Secretary-General concerning a stable international financial system[57] and the note by the United Nations Conference on Trade and Development[58] on the financial crisis and its impact on growth and development, especially in the developing countries, the report of the Task Force of the Executive Committee on Economic and Social Affairs of the United Nations Secretariat entitled "Towards a new international financial architecture", [59] the World Economic and Social Survey, 1999[60] and the Trade and Development Report, 1999.[61] In its resolution 54/198, the General Assembly took note of the report of the Secretary-General on international trade and development,[62] and recognized the importance of the expansion of international trade as an engine of growth and development and, in that context, the need for expeditious and complete integration of developing countries and countries with economies in transition into the international trading system, in full cognizance of the opportunities and challenges of globalization and liberalization and taking into account the circumstances of individual countries, in particular the trade interests and development needs of developing countries. And in its resolution 54/200, the Assembly took note of the report of the Secretary-General on unilateral economic measures as a means of political and economic coercion against developing countries,[63] and urged the international community to adopt urgent and effective measures to eliminate the use of unilateral coercive economic measures against developing countries that were not authorized by relevant organs of the United Nations or were inconsistent with the principles of international law as set forth in the Charter of the United Nations and that contravened the basic principles of the multilateral trading system.

Regarding the issue of enhancing international cooperation towards a durable solution to the external debt problem of developing countries, the General Assembly, on the same date, adopted resolution 54/202, in which it took note of the report of the Secretary-General on recent developments in the debt situation of developing countries,[64] and recognized that effective, equitable, development-oriented and durable solutions to external debt and debt-service burdens of developing countries could contribute substantially to the strengthening of the global economy and to the efforts of developing countries to achieve sustained economic growth and sustain-

able development, in accordance with the relevant General Assembly resolutions and the outcomes of recent United Nations conferences. By the same resolution, the Assembly also recognized that the Cologne debt initiative and the recent decisions of the World Bank and the International Monetary Fund on the enhanced Heavily Indebted Poor Countries Debt Initiative contributed to achieving durable solutions to the external debt and debt-service burdens of the heavily indebted poor developing countries. The Assembly further reiterated the call for industrialized countries that had not yet contributed to the Enhanced Structural Adjustment Facility (renamed Poverty Reduction and Growth Facility) and the Heavily Indebted Poor Countries Trust Fund to come forward immediately with their contribution.

Concerning the implementation of the commitments and policies agreed upon in the Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of the Developing Countries, and implementation of the International Development Strategy for the Fourth United Nations Development Decade, the General Assembly, also on 22 December 1999, adopted resolution 54/206, in which it took note of the report of the Secretary-General on the topic.[65] In the same resolution, the Assembly recognized the efforts made to implement the Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of the Developing Countries, and the International Development Strategy for the Fourth United Nations Development Decade in the 1990s, and stressed the need to strengthen such actions in collaboration with, inter alia, efforts taken in the context of the United Nations New Agenda for the Development of Africa in the 1990s[66] and its implementing arm, the United Nations System-wide Special Initiative on Africa, and the Programme of Action for the Least Developed Countries for the 1990s.[67] And in its resolution 54/226 of the same date, the General Assembly endorsed the report of the High-level Committee on the Review of Technical Cooperation among Developing Countries on its eleventh session[68] and the decisions adopted by the High-level Committee at that session.[69]

By its decision 54/449 of 22 December 1999, the General Assembly adopted the United Nations Guidelines for Consumer Protection (as expanded in 1999), the text of which follows:

United Nations Guidelines for Consumer Protection (as expanded in 1999)

I. OBJECTIVES

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power, and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:

(*a*) To assist countries in achieving or maintaining adequate protection for their population as consumers;

(*b*) To facilitate production and distribution patterns responsive to the needs and desires of consumers;

(*c*) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;

(*d*) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;

(*e*) To facilitate the development of independent consumer groups;

(*f*) To further international cooperation in the field of consumer protection;

(*g*) To encourage the development of market conditions which provide consumers with greater choice at lower prices;

(*h*) To promote sustainable consumption.

II. GENERAL PRINCIPLES

2. Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.

3. The legitimate needs which the guidelines are intended to meet are the following:

(*a*) The protection of consumers from hazards to their health and safety;

(*b*) The promotion and protection of the economic interests of consumers;

(*c*) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;

(*d*) Consumer education, including education on the environmental, social and economic impacts of consumer choice;

(*e*) Availability of effective consumer redress;

(*f*) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;

(*g*) The promotion of sustainable consumption patterns.

4. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard to the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.

5. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society and reducing inequality within and between countries.

6. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.

7. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter, references to international standards in the guidelines should be viewed in the context of the present paragraph.)

8. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

III. GUIDELINES

9. The following guidelines should apply both to home-produced goods and services and to imports.

10. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

A. *Physical safety*

11. Governments should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

12. Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as "distributors"), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.

13. Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Governments should also consider ways of ensuring that consumers are properly informed of such hazards.

14. Governments should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

B. *Promotion and protection of consumers' economic interests*

15. Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place.

16. Governments should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds.

17. Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this connection, Governments should be guided by their commitment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in its resolution 35/63 of 5 December 1980.

18. Governments should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provision of services.

19. Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost.

20. Governments should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales service and spare parts.

21. Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts and unconscionable conditions of credit by sellers.

22. Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.

23. Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.

24. Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labelling programmes and product information hotlines.

25. Governments, in close collaboration with manufacturers, distributors and consumer organizations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of appropriate advertising codes and standards for the regulation and verification of environmental claims should be encouraged.

26. Governments should, within their own national context, encourage the formulation and implementation by business, in cooperation with consumer organizations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organizations and other interested parties. These codes should receive adequate publicity.

27. Governments should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

C. *Standards for the safety and quality of consumer goods and services*

28. Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards.

29. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

30. Governments should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

D. *Distribution facilities for esssential consumer goods and services*

31. Governments should, where appropriate, consider:

(*a*) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas;

(*b*) Encouraging the establishment of consumer cooperatives and related trading activities, as well as information about them, especially in rural areas.

E. *Measures enabling consumers to obtain redress*

32. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.

33. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

34. Information on available redress and other dispute-resolving procedures should be made available to consumers.

F. *Education and information programmes*

35. Governments should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels. Consumer groups, business and other relevant organizations of civil society should be involved in these educational efforts.

36. Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.

37. Consumer education and information programmes should cover such important aspects of consumer protection as the following:

(*a*) Health, nutrition, prevention of food-borne diseases and food adulteration;

(*b*) Product hazards;

(*c*) Product labelling;

(*d*) Relevant legislation, how to obtain redress, and agencies and organizations for consumer protection;

(*e*) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities;

(*f*) Environmental protection;

(*g*) Efficient use of materials, energy and water.

38. Governments should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, including on the environmental impacts of consumption patterns and on the possible implications, including benefits and costs, of changes in consumption, particularly for the benefit of low-income consumer groups in rural and urban areas.

39. Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.

40. Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media.

41. Governments should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

G. *Promotion of sustainable consumption*

42. Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.

43. Responsibility for sustainable consumption is shared by all members and organizations of society, with informed consumers, Government, business, labour organizations, and consumer and environmental organizations playing particularly important roles. Informed consumers, have an essential role in promoting consumption that is environmentally,

economically and socially sustainable, including through the effects of their choices on producers. Governments should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. Government policy-making should be conducted in consultation with business, consumer and environmental organizations, and other concerned groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental organizations have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers, and for working with Government and business towards sustainable consumption.

44. Governments, in partnership with business and relevant organizations of civil society, should develop and implement strategies that promote sustainable consumption through a mix of policies that could include regulations; economic and social instruments; sectoral policies in such areas as land use, transport, energy and housing; information programmes to raise awareness of the impact of consumption patterns; removal of subsidies that promote unsustainable patterns of consumption and production; and promotion of sector-specific environmental-management best practices.

45. Governments should encourage the design, development and use of products and services that are safe and energy and resource efficient, considering their full life-cycle impacts. Governments should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products.

46. Governments should promote the development and use of national and international environmental health and safety standards for products and services; such standards should not result in disguised barriers to trade.

47. Governments should encourage impartial environmental testing of products.

48. Governments should safely manage environmentally harmful uses of substances and encourage the development of environmentally sound alternatives for such uses. New potentially hazardous substances should be evaluated on a scientific basis for their long-term environmental impact prior to distribution.

49. Governments should promote awareness of the health-related benefits of sustainable consumption and production patterns, bearing in mind both direct effects on individual health and collective effects through environmental protection.

50. Governments, in partnership with the private sector and other relevant organizations, should encourage the transformation of unsustainable consumption patterns through the development and use of new environmentally sound products and services and new technologies, including information and communication technologies, that can meet consumer needs while reducing pollution and depletion of natural resources.

51. Governments are encouraged to create or strengthen effective regulatory mechanisms for the protection of consumers, including aspects of sustainable consumption.

52. Governments should consider a range of economic instruments, such as fiscal instruments and internalization of environmental costs, to promote sustainable consumption, taking into account social needs, the need for disincentives for unsustainable practices and incentives for more sustainable practices, while avoiding potential negative effects for market access, in particular for developing countries.

53. Governments, in cooperation with business and other relevant groups, should develop indicators, methodologies and databases for measuring progress towards sustainable consumption at all levels. This information should be publicly available.

54. Governments and international agencies should take the lead in introducing sustainable practices in their own operations, in particular through their procurement policies. Government procurement, as appropriate, should encourage development and use of environmentally sound products and services.

55. Governments and other relevant organizations should promote research on consumer behaviour related to environmental damage in order to identify ways to make consumption patterns more sustainable.

H. *Measures relating to specific areas*

56. In advancing consumer interests, particularly in developing countries, Governments should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities, standardized international labelling and information, as well as education and research programmes in these areas. Government guidelines in regard to specific areas should be developed in the context of the provisions of the present document.

Food

57. When formulating national policies and plans with regard to food, Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food standards. Governments should maintain, develop or improve food safety measures, including safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.

58. Governments should promote sustainable agricultural policies and practices, conservation of biodiversity and protection of soil and water, taking into account traditional knowledge.

Water

59. Governments should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.

60. Governments should assign high priority to the formulation and implementation of policies and programmes concerning the multiple uses of water, taking into account the importance of water for sustainable development in general and its finite character as a resource.

Pharmaceuticals

61. Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, inter alia, procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information on pharmaceuticals. In so doing, Governments should take special account of the work and recommendations of the World Health Organization on pharmaceuticals. For relevant products, the use of that organization's Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other international information systems on pharmaceuticals should be encouraged. Measures should also be taken, as appropriate, to promote the use of international non-proprietary names (INNs) for drugs, drawing on the work done by the World Health Organization.

62. In addition to the priority areas indicated above, Governments should adopt appropriate measures in other areas, such as pesticides and chemicals, in regard, where relevant, to their use, production and storage, taking into account such relevant health and environmental information as Governments may require producers to provide and include in the labelling of products.

IV. INTERNATIONAL COOPERATION

63. Governments should, especially in a regional or subregional context:

(*a*) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection;

(*b*) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such cooperation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations;

(*c*) Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such cooperation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.

64. Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products.

65. Governments should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.

66. To promote sustainable consumption, Governments, international bodies and business should work together to develop, transfer and disseminate environmentally sound technologies, including through appropriate financial support from developed countries, and to devise new and innovative mechanisms for financing their transfer among all countries, in particular to and among developing countries and countries with economies in transition.

67. Governments and international organizations, as appropriate, should promote and facilitate capacity-building in the area of sustainable consumption, particularly in developing countries and countries with economies in transition. In particular, Governments should also facilitate cooperation among consumer groups and other relevant organizations of civil society, with the aim of strengthening capacity in this area.

68. Governments and international bodies, as appropriate, should promote programmes relating to consumer education and information.

69. Governments should work to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade, and that they are consistent with international trade obligations.

(*d*) Crime prevention

At the fifty-fourth session, the General Assembly, on the recommendation of the Second Committee, adopted resolution 54/205 of 22 December 1999, in which it condemned corruption, bribery, money-laundering and the illegal transfer of funds and called for further actions to combat these practices.

At the same session, on the recommendation of the Third Committee, the General Assembly, on 17 December 1999, adopted a number of other resolutions on crime prevention, notably resolution 54/125, in which it took note of the report of the Secretary-General on progress made in the preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.[70] In its resolution 54/126, the Assembly, bearing in mind the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its second session, held at Vienna from 8 to 12 March 1999,[71] took note of the report of the Ad Hoc Committee submitted to the Commission on Crime Prevention and Criminal Justice at its eighth session,[72] and expressed its appreciation of the results achieved by the Ad Hoc Committee during its first, second and third sessions (held at Vienna in January, March and April/May 1999 respectively) in the development of the draft United Nations Convention against Transnational Organized Crime and the draft protocols thereto, addressing trafficking in women and children,

combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and smuggling of migrants by land, air and sea. And in its resolution 54/127, the General Assembly recommended that, in negotiating the international legal instrument dealing with the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, the Ad Hoc Committee should take into account, when appropriate and pertinent, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, adopted by the General Assembly of the Organization of American States at its twenty-fourth special session, held in Washington, D.C., in November 1997,[73] as well as other existing international instruments and ongoing initiatives.

Moreover, in its resolution 54/128, the General Assembly took note of, and subscribed to, the conclusions and recommendations of the Expert Group Meeting on Corruption and its Financial Channels, held in Paris from 30 March to 1 April 1999, which were contained in the report of the Expert Group Meeting.[74] In the same resolution, the Assembly also took note of the Declaration made by the first Global Forum on Fighting Corruption, held in Washington, D.C., from 24 to 26 February 1999,[75] and noted that the second Global Forum was to be held in the Netherlands in 2000 as a follow-up to the first Global Forum.

By its decision 54/431 of 17 December 1999, the General Assembly took note of the report of the Secretary-General on the elimination of violence against women.[76]

(*e*) International cooperation against the world drug problem

Status of international instruments

During the course of 1999, one more State became a party to the 1961 Single Convention on Narcotic Drugs,[77] bringing the total number of parties to 143; three more States became parties to the 1971 Convention on Psychotropic Substances,[78] bringing the total to 161; two more States became parties to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[79] bringing the total to 110; one more State became a party to the 1975 Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961,[80] bringing the total number of parties to 157; and two more States became parties to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,[81] bringing the total to 154.

Consideration by the General Assembly

On 17 December 1999, the General Assembly, on the recommendation of the Third Committee, adopted resolution 54/132, by which it adopted the Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction, the text of which follows:

Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction

PREAMBLE

1. In the Political Declaration adopted by the General Assembly at its twentieth special session, Member States:

(*a*) Recognized that demand reduction was an indispensable pillar in the global approach to countering the world drug problem and committed themselves:

(i) To introducing into their national programmes and strategies the provisions set out in the Declaration on the Guiding Principles of Drug Demand Reduction;

(ii) To working closely with the United Nations International Drug Control Programme to develop action-oriented strategies to assist in the implementation of the Declaration;

(iii) To establishing 2003 as a target date for new or enhanced drug demand education strategies and programmes set up in close collaboration with public health, social welfare and law enforcement authorities;

(iv) To achieving significant and measurable results in the field of demand reduction by 2008;

(*b*) Called upon all States to report biennially to the Commission on Narcotic Drugs on their efforts to meet the above-mentioned goals and targets for 2003 and 2008.

2. The present Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction is offered as guidance to Member States in implementing the above-mentioned commitments. Organizations of the United Nations system,[a] other international organizations, regional organizations and non-governmental organizations are invited to provide support to Member States in implementing the Action Plan, according to their available resources, specific mandates and the different roles that they are to play in achieving the goals set out in the Declaration.

3. The Action Plan reflects the emphasis in the Declaration on the need for a comprehensive and balanced approach involving demand reduction and supply reduction, each reinforcing the other, together with the appropriate application of the principle of shared responsibility. It stresses the need for services responsible for prevention, including law enforcement agencies, to transmit the same message and use similar language.

4. The Action Plan is guided by the purposes and principles of the Charter of the United Nations and international law, in particular respect for the sovereignty and territorial integrity of States, non-interference in the internal affairs of States, human rights and fundamental freedoms and the principles of the Universal Declaration of Human Rights. It allows for flexible approaches to reflect social, cultural, religious and political differences and it acknowledges that efforts to reduce illicit drug demand are at different levels of implementation in different countries.

5. The Action Plan recognizes that progress to reduce the demand for illicit drugs should be seen in the context of the need for programmes to reduce the demand for substances of abuse. Such programmes should be integrated to promote cooperation among all concerned, should include a wide variety of appropriate interventions, should promote health and social well-being among individuals, families and communities and should reduce the adverse consequences of drug abuse for the individual and for society as a whole.

6. The Action Plan focuses on the need to design demand reduction campaigns and programmes to meet the needs of the population in general, as well as those of specific population groups, taking into account differences in gender, culture and education and paying special attention to youth.[b] Demand reduction efforts should be developed with the participation of target groups, giving special attention to a gender perspective.

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[a] This may include, but is not restricted to, the United Nations International Drug Control Programme, the United Nations Development Programme, the Joint United Nations Programme on Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome, the International Labour Organization, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as international financial institutions such as the World Bank.

[b] As expressed, for example, in "The Vision from Banff", drawn up by the Youth Vision Jeunesse Drug Abuse Prevention Forum, held in Banff, Canada, from 14 to 18 April 1998.

I. THE COMMITMENT

7. *Objective 1.* To apply the Declaration on the Guiding Principles of Drug Demand Reduction in order to achieve significant and measurable results in reducing the demand for drugs by 2008 and to report on those results to the Commission on Narcotic Drugs. That would entail the following:

(*a*) *Impact.* Greater compliance with the spirit and principles of the Declaration and the achievement of significant and measurable results in reducing the demand for drugs;

(*b*) *Outputs.* Biennial reports by each country on the efforts to implement the Declaration and reduce the demand for drugs and on the results achieved;

(*c*) *National action.* Applying the Declaration and preparing a biennial report containing measurable results for submission to the Commission;

(*d*) *International and regional action.* The United Nations International Drug Control Programme to collate national reports and report on its findings to the Commission;

8. *Objective 2.* To secure, at the highest political level possible, a long-term commitment to the implementation of a national strategy for reducing illicit drug demand and to establish a mechanism for ensuring full coordination and participation of the relevant authorities and sectors of society. That would entail the following:

(*a*) *Impact.* Higher priority for and long-term commitment to demand reduction and effective coordination between relevant sectors of society;

(*b*) *Outputs.* A mechanism for ensuring ongoing commitment to the strategy by: (i) fostering linkages and integration with other relevant plans and programmes, for instance, those concerning health, including public health issues such as those relating to the human immunodeficiency virus, acquired immunodeficiency syndrome and hepatitis C, as well as education, housing, employment, social exclusion, law enforcement and crime prevention; (ii) encouraging the participation of all sectors of society; and (iii) providing for the assessment and reporting of results and refinement of the strategy as necessary;

(*c*) *National action.* Consultation and cooperation with potential partners in developing multisectoral plans and obtaining long-term commitments coordinated by the appropriate national authorities;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to provide appropriate assistance in establishing coordination mechanisms for those requesting it.

9. *Objective 3.* To develop and implement, by 2003, national strategies fully incorporating the guiding principles set out in the Declaration. That would entail the following:

(*a*) *Impact.* An integrated, balanced, efficient and effective national strategy for addressing drug issues, with major emphasis on demand reduction;

(*b*) *Outputs.* A strategy document tailored to national needs, characteristics and cultures, specifying the role of agencies involved, the time-frame for activities and the goals;

(*c*) *National action.* This would include: (i) developing a national strategy by assessing the problem, defining the needs and resources, establishing priorities and goals, setting timeframes for specific activities and results and determining the roles of the agencies concerned; (ii) implementing the strategy through the development of a national action plan with a multisectoral approach, endorsed by an appropriate national body; and (iii) developing a framework for assessing and reporting results and reporting on the strategy and its implementation to the Commission on Narcotic Drugs;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to provide guidance and assistance to those requesting it and to set up a database on national drug control strategies.

II. ASSESSING THE PROBLEM

10. *Objective 4.* To assess the causes and consequences of the misuse of all substances in each country and to communicate those causes and consequences to policy makers, planners and the general public in order to develop practical measures, to establish a national system to monitor drug problems and trends and to record and evaluate intervention programmes and their impact on a regular basis using national indicators and, taking into account existing national and regional data systems for monitoring drug problems and trends, as well as the goals and targets established for 2003 and 2008 in the Political Declaration adopted by the General Assembly at its twentieth special session, to work towards establishing a core set of regionally and internationally recognized indicators. That would entail the following:

(*a*) *Impact.* Programmes and policies that are based on precise and timely evidence on the causes and consequences of drug abuse;

(*b*) *Outputs.* They would include: (i) a regular national report on the current drug situation and trends; and (ii) a periodic assessment of the health, social and economic costs of drug abuse and the benefits associated with different measures and actions, on both the demand and the supply sides;

(*c*) *National action.* This would include: (i) establishing a national system for data collection and analysis of drug abuse; (ii) undertaking periodic assessments of the costs to society of drug abuse and of the medium- and long-term benefits to society if the problem is reduced; and (iii) using the information for drug policy and programme development;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations: (i) to provide advice and technical assistance to countries requesting it on the establishment of national systems for monitoring the drug abuse problem, including regionally and internationally recognized core indicators; and (ii) to promote the development of methodologies for assessing the costs and consequences of drug abuse and for undertaking cost-benefit analyses of various measures and actions.

11. *Objective 5.* To develop research programmes at the national and regional levels in scientific fields concerning drug demand reduction and to disseminate widely the results so that strategies for reducing illicit drug demand may be elaborated on a solid scientific basis. That would entail the following:

(*a*) *Impact.* Improved drug demand reduction strategies based on scientific evidence;

(*b*) *Outputs.* Programmes for research on issues related to drug demand reduction;

(*c*) *National action.* Identifying research needs, developing research programmes, mobilizing the resources required and promoting the application of research findings;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to encourage research into a wide range of drug demand reduction issues and the dissemination and application of research findings.

III. TACKLING THE PROBLEM

12. *Objective 6.* To identify and develop programmes for reducing illicit drug demand in a wide variety of health and social contexts and to encourage collaboration among those programmes, which should cover all areas of drug abuse prevention, ranging from discouraging the initial use of illicit drugs to reducing the negative health and social consequences of drug abuse, and should include continuing education, not only for all educational levels, beginning at an early age, but also in the workplace, the family and the community, and to develop programmes to make the public aware of the problem of drug abuse and of the full continuum of risks involved in such abuse and to provide information on and services for early intervention, counselling, treatment, rehabilitation, relapse prevention, aftercare and social reintegration to those in need. That would entail the following:

(*a*) *Impact.* Reduction of drug abuse and related health and social consequences;

(*b*) *Outputs*. Easily accessible drug demand reduction programmes, integrated into broader health and social programmes, covering where possible the full spectrum of services, including reducing the adverse health and social consequences of drug abuse;

(*c*) *National action*. Developing and implementing specific demand reduction activities at the primary, secondary and tertiary levels of prevention that meet the needs of various target groups and that are integrated into the health, education and other related sectors;

(*d*) *International and regional action*. The United Nations International Drug Control Programme and other relevant international and regional organizations to provide guidance and assistance to those requesting it and to facilitate the sharing of information on best strategies.

IV. FORGING PARTNERSHIPS

13. *Objective 7*. To identify how different national and local institutions and organizations may contribute to efforts to reduce illicit drug demand and to promote the linking of those institutions and organizations. That would entail the following:

(*a*) *Impact*. More efficient utilization of resources and local ownership of programmes;

(*b*) *Outputs*. Identification of the roles of national and local institutions and organizations and of networking arrangements between them with a view to improving their contribution to and the effectiveness of national strategies;

(*c*) *National action*. This would include: (i) identifying drug demand reduction programmes run by various agencies, governemental and non-governmental, and defining their role in the national strategy; and (ii) promoting and reinforcing collaboration and networking among them;

(*d*) *International and regional action*. The United Nations International Drug Control Programme and other relevant international and regional organizations to compile a collection of examples of collaborative and cooperative arrangements that are in place in Member States to promote and reinforce networking and to facilitate the sharing of information on best strategies.

V. FOCUSING ON SPECIAL NEEDS

14. *Objective 8*. To enhance the quality of programmes for reducing illicit drug demand, especially in terms of their relevance to population groups, taking into account their cultural diversity and specific needs, such as gender, age and socially, culturally and geographically marginalized groups. That would entail the following:

(*a*) *Impact*. Improvement in the quality and relevance of services offered;

(*b*) *Outputs*. Guidelines for programmes and services, taking into consideration cultural diversity and specific needs;

(*c*) *National action*. This would include: (i) establishing guidelines for the development and implementation of programmes; and (ii) monitoring and evaluating programmes according to established guidelines in order to improve programme quality and increase cost-effectiveness;

(*d*) *International and regional action*. The United Nations International Drug Control Programme and other relevant international and regional organizations to promote the development of guidelines and to facilitate the sharing of information among Member States.

15. *Objective 9*. To target the particular needs of groups most at risk of abusing drugs, through the development, in cooperation with those groups, of specially designed communication strategies and effective, relevant and accessible programmes. That would entail the following:

(*a*) *Impact*. Reduction of drug abuse among groups at risk and a reduction in the adverse health and social consequences of drug abuse;

(*b*) *Outputs*. Development of programmes and communication strategies for specific risk groups, in particular youth;

(*c*) *National action.* This would include: (i) identifying risk factors and groups at risk and developing programmes and communication strategies in cooperation with such groups to address their specific needs; and (ii) establishing and supporting mechanisms, including networks that facilitate the participation of young people in the design and implementation of programmes intended for them;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations: (i) to promote the participation of target groups in the design of projects and facilitate the sharing of information on best strategies; and (ii) to facilitate the creation of an international network promoting regular contact among youth involved in demand reduction activities and allowing them to stay informed and learn from one another.

16. *Objective 10.* To provide prevention, education, treatment or rehabilitation services to offenders who misuse drugs, whether in prison or in the community, as an addition to or, where appropriate and consistent with the national laws and policies of Member States, as an alternative to punishment or conviction, and to provide, in particular, drug-abusing offenders held in prison with services to enable them to overcome their dependence and to facilitate their reintegration in the community. That would entail the following:

(*a*) *Impact.* A reduction of drug abuse among offenders and, where appropriate, positive social integration or reintegration;

(*b*) *Outputs.* Comprehensive drug prevention, education, treatment, rehabilitation and social integration programmes for offenders;

(*c*) *National action.* Cooperation among institutions and organizations, both governmental and non-governmental, offering health, social, justice, correctional, vocational training and employment services in order to provide preventive care, education, treatment and rehabilitation for offenders and, where appropriate, programmes to enable their integration into the community;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to facilitate the sharing of information on best strategies.

VI. SENDING THE RIGHT MESSAGE

17. *Objective 11.* To undertake public information campaigns aimed at the population in general to promote health, raise awareness in society and improve people's understanding of the drug problem in the community and of the need to curb that problem, to evaluate those campaigns by establishing a follow-up system to determine their impact and to carry out research into the requirements of particular population groups, such as parents, teachers, community leaders and drug users, with regard to information on drugs and services. That would entail the following:

(*a*) *Impact.* Enhanced knowledge and awareness of the drug problem, of the need to take action and of the available support mechanisms;

(*b*) *Outputs.* Appropriately targeted public information campaigns based on knowledge acquired from research to promote greater awareness of the drug problem and to provide information on available resources and services;

(*c*) *National action.* Assessing needs and including and evaluating public information activities as part of national drug strategies;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to facilitate the sharing of information on best strategies.

18. *Objective 12.* To develop information campaigns that are relevant and precise so that they take into account the social and cultural characteristics of the target population. That would entail the following:

(*a*) *Impact.* Increased knowledge and awareness among drug users and specific social and cultural groups about drugs and the adverse health and social consequences of drug use, as well as the availability of services;

(*b*) *Outputs.* Effective and culturally appropriate information campaigns that encourage and help drug users to reduce their involvement with drugs and prevent or reduce adverse health and social problems and inform them about available services;

(*c*) *National action.* Providing information on drugs and drug abuse and on how to obtain help for those most in need, in particular drug users. Information should be based on knowledge acquired from research and developed in collaboration with the target audience;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to facilitate the sharing of information on best strategies.

19. *Objective 13.* To promote information, education and communication programmes for social mediators, for example, political, religious, education, cultural, business and union leaders, peer educators and representatives of non-governmental organizations and the media worldwide, so that they may convey appropriate and accurate messages about drug abuse. That would entail the following:

(*a*) *Impact.* Enhanced knowledge and skills among social mediators in conveying information about drug abuse;

(*b*) *Outputs.* Programmes and other activities to inform and educate social mediators and to develop their communication skills;

(*c*) *National action.* Developing training strategies for social mediators;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to facilitate the sharing of information on best strategies in this field.

VII. BUILDING ON EXPERIENCE

20. *Objective 14.* To train planners and practitioners of governmental agencies, non-governmental organizations, the private sector, and others within the community on a permanent basis in all aspects of demand reduction activities and strategic programming by identifying local, national, subregional and regional human resources and using their experience in the design of programmes in order to guarantee their continuity and to create and strengthen regional, subregional, national and local training and technical resource networks and, with the possible assistance of regional and international organizations, to facilitate the exchange of experiences and expertise by encouraging States to include demand reduction personnel from other States in training programmes that they have developed. That would entail the following:

(*a*) *Impact.* Improved knowledge and skills of practitioners in demand reduction, facilitating the development of more efficient, effective and sustainable services;

(*b*) *Outputs.* Strategies for the development and expansion of the pool of technical expertise supporting planning, implementing, monitoring and evaluation of national demand reduction programmes;

(*c*) *National action.* This would include: (i) identifying those involved in planning and implementing programmes, from planners to practitioners and institutions and individuals involved with service delivery, in order to enhance their capacity to respond to the problem; (ii) supporting the design and implementation of training programmes, reviewed and updated on a regular basis, to form part of a continuing education programme for trainers; and (iii) designing and instituting training programmes for the various sectors involved in demand reduction programmes;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to facilitate: (i) the sharing of information on best strategies; (ii) the development of guidelines on the development of curricula and training programmes, including distance learning, and assistance for those requesting it; and (iii) the intercountry exchange of experts for training purposes and the participation of foreign personnel in national training programmes developed by Member States.

21. *Objective 15.* To evaluate strategies and activities for reducing illicit drug demand and to develop mechanisms for intercountry, regional and interregional advocacy coordination, cooperation and collaboration in order to identify, share and expand best practices and effective activities in the development and implementation of drug demand reduction programmes. That would entail the following:

(*a*) *Impact.* Demand reduction programmes that are based soundly on validated experience and evidence;

(*b*) *Outputs.* They would include: (i) domestic evaluation results of strategies and activities and mechanisms for cooperation and data sharing; and (ii) mechanisms for facilitating the exchange of evaluation results and other data assessing the effectiveness of strategies and activities at the domestic, regional and interregional levels;

(*c*) *National action.* This would include: (i) monitoring and evaluating demand reduction strategies and activities and utilizing the results to inform and improve national plans; and (ii) participating in coordinating mechanisms for intercountry, regional and international exchange of information;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to facilitate the exchange of information by establishing coordination mechanisms.

22. *Objective 16.* To create an international system of information on illicit drug demand reduction by linking existing databases managed by international, regional and national organizations in order to provide a network of information on knowledge and experiences that, to the extent possible, would use the above-mentioned core set of regionally and internationally recognized indicators and to enable comparisons of national experiences to be made. That would entail the following:

(*a*) *Impact.* Improved access to information, experiences and practices to facilitate the better design of programmes and policies;

(*b*) *Outputs.* National, regional and international mechanisms allowing easy access to databases and networks for the exchange of knowledge and experience of demand reduction;

(*c*) *National action.* Establishing and maintaining databases and facilitating linkages for international networking;

(*d*) *International and regional action.* The United Nations International Drug Control Programme and other relevant international and regional organizations to participate in the creation of an international mechanism by facilitating networking and linkages between databases.

(*f*) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*

In 1999, three more States became parties to the International Covenant on Economic, Social and Cultural Rights,[82] bringing the total number of States parties to 142; two more States became parties to the 1996 International Covenant on Civil and Political Rights,[83] bringing the total to 144; one more State became a party to the 1966 Optional Protocol to the International Covenant on Civil and Political Rights,[84] bringing the total to 95; and six more States became parties to the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,[85] bringing the total to 41.

The General Assembly, by its resolution 54/157 of 17 December 1999, reaffirmed the importance of the International Covenants on Human Rights as major

parts of international efforts to promote universal respect for and observance of human rights and fundamental freedoms, and took note of the annual report of the Human Rights Committee submitted to the General Assembly at its fifty-fourth session,[86] and took note with appreciation of General Comments Nos. 25[87] and 26[88] adopted by the Committee. In the same resolution, the Assembly also took note with appreciation of the reports of the Committee on Economic, Social and Cultural Rights on its sixteenth and seventeenth sessions[89] and eighteenth and nineteenth sessions,[90] and took note of General Comments Nos. 8[91], 9,[92] 10,[93] 11[94] and 12[95] adopted by the Human Rights Committee.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination of 1966*[96]

In 1999, two more States became parties to the International Convention, bringing the total number of States parties to 155. One State became a party to the amendment to article 8 of the Convention,[97] bringing the total number of parties to 25.

The General Assembly, by its decision 54/433 of 17 December 1999, adopted on the recommendation of the Third Committee, took note of the report of the Committee on the Elimination of Racial Discrimination.[98] In its resolution 54/154 of the same date, it welcomed the report submitted by the Secretary-General on the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination and the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.[99]

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973*[100]

In 1999, the number of States parties to the Convention remained at 101.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women of 1979*[101]

In 1999, two more States became parties to the Convention, bringing the total number of States parties to 165. Two States became parties to the amendment to article 20, paragraph 1, of the Convention,[102] bringing the number to 23. On 6 October 1999, the General Assembly adopted the Optional Protocol to the Convention.[103] At 31 December 1999, there were no ratifications or accessions to the Protocol.

The General Assembly, in its resolution 54/137 of 17 December 1999, adopted on the recommendation of the Third Committee, welcomed the report of the Secretary-General on the status of the Convention.[104] In its resolution 54/136 of the same date, the Assembly took note with appreciation of the note by the Secretary-General on the activities of the United Nations Development Fund for Women (UNIFEM),[105] and emphasized the important work that the Fund undertook within the framework of the Platform for Action of the Fourth World Conference on Women[106] and in supporting the implementation of recommendations related to the empowerment of women and gender mainstreaming from other United Nations world conferences, such as the World Conference on Human Rights, held at Vienna in June 1993, the International Conference on Population and Development, held at Cairo in September 1994, and the World Summit for Social Development, held at Copenhagen in March 1995.

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984*[107]

In 1999, seven more States became parties to the Convention, bringing the total number of States parties to 118. Two more States became parties to the amendments to articles 17(7) and 18(5) of the Convention,[108] bringing the total to 23.

The General Assembly, by its resolution 54/156 of 17 December 1999, adopted on the recommendation of the Third Committee, took note of the report of the Committee against Torture.[109]

(vi) *Convention on the Rights of the Child of 1989*[110]

In 1999, the number of States parties to the Convention remained at 191. Twenty States became parties to the amendment to article 43(2) of the Convention,[111] bringing the number to 71.

The General Assembly, by its decision 54/432 of 17 December 1999, adopted on the recommendation of the Third Committee, took note of the report of the Secretary-General on the status of the Convention.[112] Furthermore, by its resolution 54/149 of the same date, the Assembly once again urged the States that had not yet done so to sign and ratify or accede to the Convention on the Rights of the Child as a matter of priority, with a view to reaching the goal of universal adherence by the tenth anniversary, in 2000, of the World Summit for Chilren and of the entry into force of the Convention. By the same resolution, the Assembly welcomed the interim report of the Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography,[113] and expressed support for her work. And in its resolution 54/148, also of 17 December 1999, the General Assembly stressed the need for full and urgent implementation of the rights of the girl child as guaranteed to her under all human rights instruments, including the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the need for universal ratification of those instruments.

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*[114]

In 1999, three additional States became parties to the Convention, bringing the total number of States parties to 12.

The General Assembly, by its resolution 54/158 of 17 December 1999, adopted on the recommendation of the Third Committee, took note of the report of the Secretary-General,[115] and welcomed the decision of the Commission on Human Rights, in its resolution 1999/44 of 27 April 1999,[116] to appoint a Special Rapporteur on the human rights of migrants to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of that vulnerable group.

(2) *Other human rights issues*

During 1999, the General Assembly, on the recommendation of the Third Committee, adopted on 17 December a number of other resolutions and decisions in the area of human rights, including decision 54/434, by which it took note of the report of the United Nations High Commissioner for Human Rights.[117]

By its resolution 54/163 of 17 December 1999, the General Assembly, mindful of the Convention on the Elimination of All Forms of Discrimination against Women, in particular of the obligation of States to treat men and women equally in all stages of procedures in courts and tribunals; calling attention to the numerous international standards in the field of the administration of justice; aware of the need for special vigilance with regard to the vulnerable situation of children and juveniles, as well as women and girls, in detention; and recalling the Guidelines for Action on Children in the Criminal Justice System[118] and the establishment of a coordination panel on technical advice and assistance in juvenile justice, invited Governments to provide training, including gender-sensitive training, in human rights in the administration of justice, including juvenile justice, to all judges, lawyers, prosecutors, social workers, immigration and police officers, and other professionals concerned, including personnel deployed in international field presences; stressed the special need for national capacity-building in the field of the administration of justice in post-conflict situations, in particular through reform of the judiciary, the police and the penal system; and invited States to make use of technical assistance offered by the relevant United Nations programmes in order to strenghten national capacities and infrastructures in the field of the administration of justice.

In its resolution 54/164, the General Assembly welcomed the report of the Secretary-General on human rights and terrorism,[119] and requested him to continue to seek the views of Member States on the implications of terrorism, in all its forms and manifestations, for the full enjoyment of all human rights and fundamental freedoms, with a view to incorporating them in his report. And in its resolution 54/165 the Assembly recognized that, while globalization by its impact on, inter alia, the role of the State, might affect human rights, the promotion and protection of all human rights was first and foremost, the responsibility of the State; took note of the request by the Commission on Human Rights to the Sub-Commission on the Promotion and Protection of Human Rights[120] to undertake a study, based on the reports of the treaty bodies, special rapporteurs, independent experts and working groups of the Commission, on the issue of globalization and its impact on the full enjoyment of all human rights, for the consideration of the Commission at its fifty-seventh session.

(*g*) Refugee issues

(1) *Status of international instruments*

During 1999, two more States became parties to the 1951 Convention relating to the Status of Refugees,[121] bringing the total number of States parties to 134; two more States became parties to the 1967 Protocol relating to the Status of Refugees,[122] bringing the total number of States parties to 134; four more States became parties to the 1954 Convention relating to the Status of Stateless Persons,[123] bringing the total number of States parties to 49; and two States became parties to the 1961 Convention on the Reduction of Statelessness,[124] bringing the total number of States parties to 21.

(2) *Office of the United Nations High Commissioner for Refugees*[125]

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees held its fiftieth session at the United Nations Office at Geneva from 4 to 8 October 1999 and adopted a number of decisions and conclusions, concerning international protection and 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.

(3) *Consideration by the General Assembly*

At its fifty-fourth session, the General Assembly, on the recommendation of the Third Committee, adopted a number of resolutions in this area, on 17 December 1999, among them resolution 54/143, in which the Assembly, taking note of the requests regarding the enlargement of the Executive Committee contained in the notes verbales to the Secretary-General from the Permanent Mission of Côte d'Ivoire to the United Nations,[126] the Permanent Mission of the Republic of Korea[127] and the Permanent Mission of Chile,[128] decided to increase the number of members of the Executive Committee from 54 to 57 States.

In its resolution 54/144, on the follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States, the General Assembly took note of the reports of the Secretary-General[129] and of the United Nations High Commissioner for Refugees.[130] In its resolution 54/145, concerning assistance to unaccompanied refugee minors, the Assembly took note of the report of the Secretary-General[131] and of the report of the Special representative of the Secretary-General for Children and Armed Conflict.[132] And in its resolution 54/147, regarding assistance to refugees, returnees and displaced persons in Africa, the Assembly took note of the reports of the Secretary-General[133] and of the United Nations High Commissioner for Refugees.[134]

(*h*) Humanitarian issues

By its resolution 54/167 of 17 December 1999, entitled "Protection of and assistance to internally displaced persons", adopted on the recommendation of the Third Committee, the General Assembly took note with appreciation of the report of the Representative of the Secretary-General on internally displaced persons,[135] and welcomed the study prepared by the Representative of the Secretary-General to promote a comprehensive strategy for better protection, assistance and development for internally displaced persons.[136]

On 8 December 1999, the General Assembly, without reference to a Main Committee, adopted resolution 54/95, entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations", in which it welcomed the holding of the second humanitarian affairs segment of the Economic and Social Council during its substantive session of 1999 and agreed conclusions 1999/1 adopted at that session.[137] By its resolution 54/96 A to K of 8 December 1999, under the overall title "Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance: special economic assistance to individual countries or regions", the General Assembly highlighted the current status of various countries and regions that required humanitarian and disaster relief assistance, e.g., Tajikistan, Democratic Republic of the Congo, Djibouti, Somalia, Central America.

Furthermore, by its resolution 54/98 of 8 December 1999, also adopted without reference to a Main Committee, the General Assembly took note of the report of the

General Assembly,[138] prepared in pursuance of its resolution 52/171 on the participation of volunteers, "White Helmets", in activities of the United Nations in the field of humanitarian relief, rehabilitation and technical cooperation for development.

(*i*) Ad hoc International Criminal Tribunals

At the fifty-fourth session, the General Assembly, on 8 November 1999, adopted, without reference to a Main Committee, two decisions concerning the ad hoc Tribunals: decision 54/143, in which it took note of the sixth 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,[139] and decision 54/414, in which it took note of the fourth 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.[140]

(*j*) Safety of United Nations personnel

In its resolution 54/192 of 17 December 1999, adopted without reference to a Main Committee, the General Assembly welcomed the addendum on the safety and security of United Nations and humanitarian personnel to the Secretary-General's report on strengthening of the coordination of emergency humanitarian assistance of the United Nations,[141] and requested the Secretary-General to submit to it at its fifty-fifth session a comprehensive report on the safety and security situation of humanitarian personnel and protection of United Nations personnel, including an account of the measures taken by Governments and the United Nations in prevention of and in response to all individual security incidents involving the arrest, hostage-taking or death of United Nations and its associated personnel; and recognized the urgency to consult further to address the recommendations contained in the above-mentioned addendum, and to that end requested the Secretary-General to submit by May 2000, for its consideration during its fifty-fourth session, a report containing a detailed analysis and recommendations addressing the scope of legal protection under the 1994 Convention on the Safety of United Nations and Associated Personnel,[142] and in that regard took note of the report of the Secretary-General on protection of civilians in armed conflicts[143] and the range of views expressed during the open debates of the Security Council on 12 February 1999[144] and 16 and 17 September 1999,[145] and protection of civilians in armed conflicts.

(*k*) Cultural issues

By its resolution 54/190 of 17 December 1999, adopted without reference to a Main Committee, the General Assembly, recalling the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict,[146] the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,[147] the 1995 Convention on Stolen or Illegally Exported Cultural Objects[148] and the 1997 Medellin Declaration for Cultural Diversity and Tolerance and the Plan of Action on Cultural Cooperation, adopted by the Ministers of Culture of the Movement of Non-Aligned Countries, and taking note with interest of the report of the Secretary-General submitted in cooperation

with the Director-General of UNESCO,[149] welcomed the adoption of the Second Protocol[150] to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 26 March 1999, and invited all States parties to the Convention to consider becoming parties to the Second Protocol to the Convention.

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4. LAW OF THE SEA

(*a*) Status of the United Nations Convention on the Law of the Sea of 1982 (UNCLOS)[151]

In 1999, two more States became parties to the Convention, bringing the total number of States parties to 132.

(*b*) Report of the Secretary-General[152]

The report of the Secretary-General on oceans and the law of the sea submitted to the General Assembly at its fifty-fourth session covers a number of relevant areas, among them the status of UNCLOS and the related Agreements; the institutions created under the 1982 Convention, e. g., the International Seabed Authority, the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf and dispute settlement mechanisms (conciliation, arbitration and special arbitration).

The International Tribunal for the Law of the Sea[153] had held its seventh and eighth sessions in conjunction with the hearing and deliberations in the M/V "Saiga" (No. 2) case. In October 1998, the Tribunal had issued an order setting the time limits for the filing of the second round of pleadings, and public sittings regarding the Request for the prescription of provisional measures were held on 8 March 1999, during which oral presentations, examination and re-examination of witnesses were conducted. On 11 March 1999, the Tribunal delivered its Order on the request, and on 1 July 1999 the Tribunal delivered its judgement on the merits of the case. The Tribunal also received two requests from the Governmenta of Australia and New Zealand, on 30 July 1999, for the Prescription of Provisional Measures against the Government of Japan concerning the conservation and management of the southern bluefin tuna. On 27 August 1999, the Tribunal deliberated on the case and delivered its Order, by which it found that it had jurisdiction over the dispute, and the Tribunal further prescribed provisional measures.

The report of the Secretary-General also presented information on the shipping industry and navigation; crimes at sea; the development and management of marine resources, both living and non-living; the reduction and control of pollution; and underwater cultural heritage. Moreover, the report listed those cases before the International Court of Justice that involved law of the sea issues.

(*c*) Consideration by the General Assembly

At its fifty-fourth session, the General Assembly adopted, without reference to a Main Committee, resolution 54/31 of 24 November 1999, in which it called upon

all States that had not done so, in order to achieve the goal of universal participation, to become parties to the 1982 Convention and the Agreement relating to the implementation of Part XI of the Convention;[154] noted the continued contribution of the International Tribunal for the Law of the Sea to the peaceful settlement of disputes in accordance with Part XV of the Convention, and underlined its important role and authority concerning the interpretation or application of the Convention and the Agreement; encouraged States parties to the Convention to consider making a written declaration choosing from the means set out in article 287 for the settlement of disputes concerning the interpretation or application of the Convention and the Agreement, and invited States to note the provisions of annexes V, VI, VII and VIII to the Convention concerning, respectively, conciliation, the International Tribunal for the Law of the Sea, arbitration and special arbitration; and requested the Secretary-General to circulate lists of conciliators and arbitrators drawn up and maintained in accordance with annexes V and VII to the Convention and to update those lists accordingly. By the same resolution, the Assembly noted the current work of the International Seabed Authority, and emphasized the importance of the commitment of its members to work expeditiously towards the adoption during 2000 of the regulations on prospecting and exploration for polymetallic modules; noted the adoption of the Headquarters Agreement betwen the Government of Jamaica and the Authority;[155] and called upon States that had not done so to consider ratifying or acceding to the Agreement on the Privileges and Immunities of the Tribunal[156] and to the Protocol on the Privileges and Immunities of the Authority.[157] The Assembly furthermore urged States to take all practicable steps to prevent the pollution of the sea by dumping of radioactive materials and industrial wastes, in accordance with the relevant provisions of the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter[158] and its amendments; and called upon States to become parties to and to implement the 1996 Protocol to that Convention.[159] Moreover, the Assembly called upon States to implement the International Maritime Organization guidelines on preventing attacks against ships and prosecuting offenders, and with other IMO initiatives in that area; and urged States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol,[160] and to ensure its effective implementation.

In addition, in its resolution 54/32, also of 24 November 1999, the General Assembly welcomed the report of the Secretary-General on recent developments and current status of the Agreement for the Implementation of the Provisions of the 1982 Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,[161] and called upon all States and other entities referred to in article X, paragraph 1, of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas[162] that had not done so to accept that instrument. And in its resolution 54/33 of the same date, the General Assembly endorsed the recommendations made by the Commission on Sustainable Development through the Economic and Social Council under the sectoral theme of "Oceans and seas" regarding international coordination and cooperation.[163]

5. INTERNATIONAL COURT OF JUSTICE[164]

Cases before the Court[165]

(*a*) Contentious cases

(i) *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*

The Court, by an Order of 30 March 1998 (*I.C.J. Reports 1998*, p. 243), directed that each of the Parties submit a Reply on the merits by 30 March 1999. It also decided that Qatar should file by 30 September 1998 an interim report, to be as comprehensive and specific as possible, on the question of the authenticity of each of the disputed documents. The Court specified that Qatar's Reply should contain its detailed and definitive position on the question and that Bahrain's Reply should contain its observations on Qatar's interim report.

In the interim report that it submitted on 30 September 1998, Qatar announced that for the purposes of the case, it would not rely on the disputed documents. In that report, to which four experts' reports were appended, Qatar stated on the one hand that, on the question of the material authenticity of the documents, there were differing views not only between the respective experts of the Parties, but also between its own experts, and on the other that, as far as the historical consistency of the content of those documents was concerned, the experts that it had consulted considered that Bahrain's assertions contained exaggerations and distortions of the facts. Qatar stated that it had taken its decision "so as to enable the Court to address the merits of the case without further procedural complications".

By an Order dated 17 February 1999 (*I.C.J. Reports 1999*, p. 3), the Court placed on record the decision of Qatar to disregard the 82 documents annexed to its written pleadings which had been challenged by Bahrain and it accordingly decided that the Replies yet to be filed by Qatar and by Bahrain would not rely on these documents. The Court granted a two-month extension of the time limit for the submission of these Replies (which was accordingly set for 30 May 1999) following a request by Qatar, to which Bahrain had no objection.

After filing their Replies within the extended time limit, Qatar and Bahrain submitted, with the approval of the Court, certain additional expert reports and historical documents.

(ii, iii) *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (Libyan Arab Jamahiriya v. United States of America)*

By orders of 30 March 1998 (*I.C.J. Reports 1998*, pp. 237 and 240 respectively), the Court fixed 30 December 1998 as the time limit for the filing of the Counter-Memorials of the United Kingdom of Great Britain and Northern Ireland and the United States of America respectively. Upon a proposal of the United Kingdom and of the United States respectively, who referred to diplomatic initiatives undertaken shortly before, and after the views of Libya had been ascertained, the Senior Judge, Acting President, of the Court extended by Orders of 17 December 1998 (*I.C.J. Reports 1998*, pp. 746 and 749) that time limit by three months to 31 March 1999. The Counter-Memorials were filed within the time limit thus extended.

By orders of 29 June 1999 (*I.C.J. Reports 1999*, pp. 975 and 979), the Court, taking account of the agreement of the Parties and the special circumstances of the case, authorized the submission of a Reply by Libya and a Rejoinder by the United Kingdom and the United States of America respectively, fixing 29 June 2000 as the time limit for the filing of Libya's Reply. The Court fixed no date for the filing of the Rejoinders; the representatives of the respondent States had expressed the desire that no such date be fixed at the current stage of the proceedings, "in view of the new circumstances consequent upon the transfer of the two accused to the Netherlands for trial by a Scottish court". Libya's Reply was filed within the prescribed time limit.

(iv) *Oil Platforms (Islamic Republic of Iran v. United States of America)*

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 counter-claim 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. The Court considered moreover that it was necessary, in order to secure strict equality between the Parties, to reserve the right of Iran to present its views in writing a second time on the United States counter-claim, in an additional pleading, the filing of which might be the subject of a subsequent order.

Judges Oda and Higgins appended separate opinions to the Order; Judge ad hoc Rigaux appended a dissenting opinion.

By an Order of 26 May 1998 (*I.C.J. Reports 1998*, p. 269), the Vice-President of the Court, Acting President, extended, at the request of Iran and taking into account the views expressed by the United States, the time limits for Iran's Reply and the United States Rejoinder to 10 December 1998 and 23 May 2000 respectively. By an Order of 8 December 1998 (*I.C.J. Reports 1998,* p. 740), the Court further extended those time limits to 10 March 1999 for Iran's Reply and 23 November 2000 for the United States Rejoinder. Iran's Reply was filed within the time limit thus extended.

(v) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*

By an Order of 22 January 1998 (*I.C.J. Reports 1998*, p. 3), the President of the Court, at the request of Bosnia and Herzegovina and taking into account the views expressed by Yugoslavia, extended the time limits for the Reply of Bosnia and Herzegovina and the Rejoinder of Yugoslavia to 23 April 1998 and 22 January 1999 respectively. The Reply of Bosnia and Herzegovina was filed within the prescribed time limit.

Following a request from Yugoslavia and after the views of Bosnia and Herzegovina had been ascertained, the Court, by an Order of 11 December 1998 (*I.C.J. Reports 1998*, p. 743), extended the time limit for the filing of Yugoslavia's Rejoinder to 22 February 1999. That Rejoinder was filed within the time limit thus extended.

Since then several exchanges of letters have taken place concerning new procedural difficulties in the case.

(vi) *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*

By an Order of 30 June 1998 (*I.C.J. Reports 1998*, p. 420), the Court, having been informed of the views of the Parties, fixed 31 March 1999 as the time limit for the filing of the Counter-Memorial of Nigeria.

On 28 October, Nigeria filed a request for an interpretation of the Court's judgment on preliminary objections of 11 June 1998. This request for interpretation formed a separate case, in which the Court delivered its judgment on 25 March 1999 (cf. *I.C.J. Yearbook 1998-1999*, pp. 225-230).

On 23 February 1999, Nigeria made a request for extension of the time limit for the deposit of its Counter-Memorial, because it would "not be in a position to complete its Counter-Memorial until it [knew] the outcome of its request for interpretation as it [did] not at present know the scope of the case it [had] to answer on State responsibility". By a letter of 27 February 1999 the Agent of Cameroon informed the Court that his Government "[was] resolutely opposed to the granting of Nigeria's request", as its dispute with Nigeria "call[ed] for a rapid decision".

By an Order of 3 March 1999 (*I.C.J. Reports 1999*, p. 24), the Court, considering that although a request for interpretation "cannot in itself suffice to justify the extension of a time limit, it should nevertheless, given the circumstances of the case, grant Nigeria's request", extended to 31 May 1999 the time limit for the filing of Nigeria's Counter-Memorial. The Counter-Memorial was filed within the time limit thus extended.

The Counter-Memorial included counter-claims, specified in part VI. At the end of each section dealing with a particular sector of the frontier, the Nigerian Government asked the Court to declare that the incidents referred to

> "engage the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the parties, then to be awarded by the Court in a subsequent phase of the case";

The seventh and final submission set out by the Nigerian Government in its Counter-Memorial reads as follows:

> "*as to Nigeria's counter-claims as specified in part VI of this Counter-Memorial*, [the Court is asked to] adjudge and declare that Cameroon bears responsibility to Nigeria in respect of those claims, the amount of reparation due therefore, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment".

In an order of 30 June 1999 (*I.C.J. Reports 1999*, p. 983), the Court found that Nigeria's counter-claims were admissible as such and formed part of the proceedings; it further decided that Cameroon should submit a Reply and Nigeria a Rejoinder, relating to the claims of both Parties, and fixed the time limits for those pleadings at 4 April 2000 and 4 January 2001 respectively. Cameroon's Reply was filed within the prescribed time limit.

On 30 June 1999 the Republic of Equatorial Guinea filed a request for permission to intervene in the case.

In its request, Equatorial Guinea stated that the purpose of its intervention would be "to protect [its] legal rights in the Gulf of Guinea by all legal means" and "to inform the Court of Equatorial Guinea's legal rights and interests so that these may remain unaffected as the Court proceeds to address the question of the maritime boundary between Cameroon and Nigeria". Equatorial Guinea made it clear

that it did not seek to intervene in those aspects of the proceedings that relate to the land boundary between Cameroon and Nigeria, nor to become a party to the case. It further stated that, although it would be open to the three countries to request the Court not only to determine the Cameroon-Nigeria maritime boundary but also to determine Equatorial Guinea's maritime boundary with these two States, Equatorial Guinea had made no such request and wished to continue to seek to determine its maritime boundary with its neighbours by negotiation.

The Court fixed 16 August 1999 as the time limit for the filing of written observations on Equatorial Guinea's request by Cameroon and Nigeria. Those written observations were filed within the prescribed time limits.

By an Order of 21 October 1999 (*I.C.J. Reports 1999*, p. 1029), the Court handed down its decision on Equatorial Guinea's Application for permission to intervene. The full text of the operative paragraph reads as follows:

"For these reasons,

THE COURT,

Unanimously,

1. *Decides* that the Republic of Equatorial Guinea is permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in its Application for permission to intervene;

2. *Fixes* the following time limits for the filing of the written statement and the written observation referred to in Article 85, paragraph 1, of the Rules of Court:

4 April 2001 for the written statement of the Republic of Equatorial Guinea;

4 July 2001 for the written observation of the Republic of Cameroon and of the Federal Republic of Nigeria; and

3. *Reserves* the subsequent procedure for further decision."

(vii) *Kasikili/Sedudu Island (Botswana/Namibia)*

Public sittings to hear the oral arguments of the Parties were held from 15 February to 5 March 1999.

At a public sitting held on 13 December 1999, the Court delivered its judgment (*I.C.J. Reports 1999*, p. 1045), a summary of which is given below, followed by the text of the operative paragraph:

Review of the proceedings and submissions of the Parties (paras. 1-10)

The Court begins by recalling that by joint letter dated 17 May 1996, Botswana and Namibia transmitted to the Registrar the original text of a Special Agreement between the two States, signed at Gaborone on 15 February 1996 and entered into force on 15 May 1996, article I of which reads as follows:

"The Court is asked to determine, on the basis of the Anglo-German Treaty of 1 July 1890 [an agreement between Great Britain and Germany respecting the spheres of influence of the two countries in Africa] and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island."

The Court then recites the successive stages of the proceedings and sets out the submissions of the Parties.

Botswana's final submissions as presented at the hearing of 5 March 1999 were as follows:

"*May it please the Court*:

(1) to adjudge and declare:

(*a*) that the northern and western channel of the Chobe River in the vicinity of Kasikili/Sedudu Island constitutes the 'main channel' of the Chobe River in accordance with the provisions of article III (2) of the Anglo-German Agreement of 1890; and

(*b*) consequently, sovereignty in respect of Kasikili/Sedudu Island vests exclusively in the Republic of Botswana; and further

(2) to determine the boundary around Kasikili/Sedudu Island on the basis of the thalweg in the northern and western channel of the Chobe River."

Namibia's final submissions read at the hearing of 2 March 1999 were as follows:

"*May it please the Court, rejecting all claims and submissions to the contrary, to adjudge and declare*

1. The channel that lies to the south of Kasikili/Sedudu Island is the main channel of the Chobe River.

2. The channel that lies to the north of Kasikili/Sedudu Island is not the main channel of the Chobe River.

3. Namibia and its predecessors have occupied and used Kasikili Island and exercised sovereign jurisdiction over it, with the knowledge and acquiescence of Botswana and its predecessors since at least 1890.

4. The boundary between Namibia and Botswana around Kasikili/Sedudu Island lies in the centre (that is to say, the *thalweg*) of the southern channel of the Chobe River.

5. The legal status of Kasikili/Sedudu Island is that it is a part of the territory under the sovereignty of Namibia."

Background to the case (paras. 11-16)

The Court then gives a description of the geography of the area concerned, illustrated by three sketch-maps.

Thereafter the Court recounts the history of the dispute between the Parties which is set against the background of the nineteenth century race among the European colonial Powers for the partition of Africa. In the spring of 1890, Germany and Great Britain entered into negotiations with a view to reaching agreement concerning their trade and their spheres of influence in Africa. The resulting Treaty of 1 July 1890 delimited, inter alia, the spheres of influence of Germany and Great Britain in South-West Africa; that delimitation lies at the heart of the present case.

In the ensuing century, the Territories involved experienced various mutations in status. The independent Republic of Botswana came into being on 30 September 1966, on the territory of the former British Bechuanaland Protectorate, while Namibia (of which the Caprivi Strip forms part) became independent on 21 March 1990.

Shortly after Namibian independence, differences arose between the two States concerning the location of the boundary around Kasikili/Sedudu Island. In May 1992, it was agreed to submit the determination of the boundary around the island to a joint team of technical experts. In February 1995, the joint team report, in which the team announced that it had failed to reach an agreed conclusion on the question put to it, was considered and it was decided to submit the dispute to the International Court of Justice for a final and binding determination.

The rules of interpretation applicable to the 1890 Treaty (paras. 18-20)

The Court begins by observing that the law applicable to the present case has its source first in the 1890 Treaty, which Botswana and Namibia acknowledge to be binding on them. As regards the interpretation of that Treaty, the Court notes that neither Botswana nor Namibia are parties to the Vienna Convention on the Law of Treaties of 23 May 1969, but that both of them consider that article 31 of the Vienna Convention is applicable inasmuch as it reflects customary international law.

According to article 31 of the Vienna Convention on the Law of Treaties:

> "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> "2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
>
> (*a*) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
>
> (*b*) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."

The Court indicates that it shall proceed to interpret the provisions of the 1890 Treaty by applying the rules of interpretation set forth in the 1969 Vienna Convention, recalling that:

> "a treaty must be interpreted in good faith, in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Interpretation must be based above all upon the text of the treaty. As a supplementary measure recourse may be had to means of interpretation such as the preparatory work of the treaty." (*Territorial Dispute (Libyan Arab Jamahiriya/Chad) Judgment, I.S.J. Reports 1994*, pp. 21-22, para. 41)

The text of the 1890 Treaty (paras. 21-46)

The Court first examines the text of the 1890 Treaty, article III of which reads as follows:

> "In Southwest Africa the sphere in which the exercise of influence is reserved to Germany is bounded:
>
> "1. To the south by a line commencing at the mouth of the Orange river, and ascending the north bank of that river to the point of its intersection by the 20th degree of east longitude.
>
> "2. To the east by a line commencing at the above-named point, and following the 20th degree of east longitude to the point of its intersection by the 22nd parallel of south latitude; it runs eastward along that parallel to the point

of its intersection by the 21st degree of east longitude; thence it follows that degree northward to the point of its intersection by the 18th parallel of south latitude; it runs eastward along that parallel till it reaches the river Chobe, and descends the centre of the main channel of that river to its junction with the Zambesi, where it terminates.

"It is understood that under this arrangement Germany shall have free access from her Protectorate to the Zambesi by a strip of territory which shall at no point be less than 20 English miles in width.

"The sphere in which the exercise of influence is reserved to Great Britain is bounded to the west and northwest by the above-mentioned line. It includes Lake Ngami.

"The course of the above boundary is traced in general accordance with a map officially prepared for the British Government in 1889."

As far as the region covered by the present case is concerned, this provision locates the dividing line between the spheres of influence of the Contracting Parties in the "main channel" of the River Chobe; however, neither this nor any other provision of the Treaty furnishes criteria enabling that "main channel" to be identified. It must also be noted that the English version refers to the "centre" of the main channel, while the German version uses the term "thalweg" of that channel (*Thalweg des Hauptlaufes*). Observing that Botswana and Namibia did not themselves express any real difference of opinion on the meaning of these terms, the Court indicates that it will accordingly treat the words "centre of the main channel" in article III, paragraph 2, of the 1890 Treaty as having the same meaning as the words "*Thalweg des Hauptlaufes*". In the Court's opinion, the real dispute between the Parties concerns the location of the main channel where the boundary lies. In Botswana's view, it is to be found "on the basis of the thalwegs in the northern and western channel of the Chobe", whereas in Namibia's view, it "lies in the centre (that is to say thalwegs) of the southern channel of the Chobe River". The Court observes that by introducing the term "main channel" into the draft treaty, the contracting parties must be assumed to have intended that a precise meaning be given to it. For these reasons, the Court indicates that it will therefore proceed first to determine the main channel. In so doing, it will seek to determine the ordinary meaning of the words "main channel" by reference to the most commonly used criteria in international law and practice, to which the Parties have referred.

Criteria for identifying the "main channel" (paras. 29-42)

The Court notes that the Parties to the dispute agree on many of the criteria for identifying the "main channel", but disagree on the relevance and applicability of several of those criteria.

For Botswana, the relevant criteria are as follows: greatest depth and width; bed profile configuration; navigability; greater flow of water. Botswana also lays stress on the importance, from the standpoint of identification of the main channel, of "channel capacity", "flow velocity" and "volume of flow". Namibia acknowledges that

"possible criteria for identifying the main channel in a river with more than one channel are the channel with the greatest width, or the greatest depth, or the channel that carries the largest proportion of the annual flow of the river. In many cases the main channel will have all three of these characteristics."

It adds, however, referring to the sharp variations in the level of the Chobe's waters, that: "neither width nor depth are suitable criteria for determining which channel is the main channel". Among the possible criteria, Namibia therefore attaches the greatest weight to the amount of flow: according to it, the main channel is the one "that carries the largest proportion of the annual flow of the river". Namibia also emphasized that another key task was to identify the channel that is most used for river traffic.

The Court notes that the Parties have expressed their views on one or another aspect of the criteria, distinguishing between them or placing emphasis on their complementarity and their relationship with other criteria. Before coming to a conclusion on the respective role and significance of the various criteria thus chosen, the Court further notes that the present hydrological situation of the Chobe around Kasikili/Sedudu Island may be presumed to be essentially the same as that which existed when the 1890 Treaty was concluded.

Depth (para. 32)

Notwithstanding all the difficulties involved in sounding the depth of the channels and interpreting the results, the Court concludes that the northern channel is deeper than the southern one, as regards mean depth, and even as regards minimum depth.

Width (para. 33)

With regard to the width, the Court finds, on the basis of a report dating from as early as 1912, aerial photographs taken between 1925 and 1985, and satellite pictures taken in June 1975, that the northern channel is wider than the southern channel.

Flow of water (paras. 34-37)

With regard to the flow, i.e., the volume of water carried, the Court is not in a position to reconcile the figures submitted by the Parties, who take a totally different approach to the definition of the channels concerned. The Court is of the opinion that the determination of the main channel must be made according to the low water baseline and not the floodline. The evidence shows that when the river is in flood, the Island is submerged by flood water and the entire region takes on the appearance of an enormous lake. Since the two channels are then no longer distinguishable, it is not possible to determine the main channel in relation to the other channel. The Court therefore is not persuaded by Namibia's argument concerning the existence of a major "main" channel whose visible southern channel would merely constitute the thalweg.

Visibility (para. 38)

The Court is further unable to conclude that, in terms of visibility—or of general physical appearance—the southern channel is to be preferred to the northern channel, as maintained by Namibia.

Bed profile configuration (para. 39)

Having examined the arguments, maps and photographs put forward by the Parties, the Court is also unable to conclude that, from its bed configuration, the southern channel constitutes the principal and natural prolongation of the course of the Chobe before the bifurcation.

Navigability (paras. 40-42)

The Court notes that the navigability of watercourses varies greatly, depending on prevailing natural conditions. Those conditions can prevent the use of the watercourse in question by large vessels carrying substantial cargoes, but permit light flat-bottomed vessels to navigate. In the present case, the data furnished by the Parties tend to prove that the navigability of the two channels around Kasikili/Sedudu Island is limited by their shallowness. This situation inclines the Court to the view that, in this respect, the "main channel" in this part of the Chobe is that of the two which offers more favourable conditions for navigation. In the Court's view, it is the northern channel which meets this criterion.

For the foregoing reasons, the Court concludes that, in accordance with the ordinary meaning of the terms that appear in the pertinent provision of the 1890 Treaty, the northern channel of the River Chobe around Kasikili/Sedudu Island must be regarded as its main channel. It observes that this conclusion is supported by the results of three on-site surveys carried out in 1912, 1948 and 1985, which concluded that the main channel of the River Chobe was the northern channel.

The object and purpose of the 1890 Treaty (paras. 43-46)

The Court then considers how and to what extent the object and purpose of the treaty can clarify the meaning to be given to its terms. While the treaty in question is not a boundary treaty proper but a treaty delimiting spheres of influence, the Parties nonetheless accept it as the treaty determining the boundary between their territories. The contracting powers, the Court observes, by opting for the words "centre of the main channel", intended to establish a boundary separating their spheres of influence even in the case of a river having more than one channel.

The Court notes that navigation appears to have been a factor in the choice of the contracting powers in delimiting their spheres of influence, but it does not consider that navigation was the sole objective of the provisions of article III, paragraph 2, of the Treaty. In referring to the main channel of the Chobe, the parties sought both to secure for themselves freedom of navigation on the river and to delimit as precisely as possible their respective spheres of influence.

The subsequent practice (paras. 47-80)

In the course of the proceedings, Botswana and Namibia made abundant reference to the subsequent practice of the parties to the 1890 Treaty—and of their successors—as an element in the interpretation of that Treaty. While both Parties accept that interpretative agreements and subsequent practice do constitute elements of treaty interpretation under international law, they disagree on the consequences to be drawn from the facts in this case for purposes of the interpretation of the 1890 Treaty.

Article 31, paragraph 3, of the 1969 Vienna Convention on the Law of Treaties, which, as stated earlier, reflects customary law, provides, for the interpretation of treaties, as follows:

> "3. There shall be taken into account, together with the context:
>
> (*a*) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
>
> (*b*) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretations."

In support of its interpretation of article III, paragraph 2, of the 1890 Treaty, Botswana relies principally on three sets of documents: a report on a reconnaissance of the Chobe produced in August 1912 by an officer of the Bechuanaland Protectorate Police, Captain Eason; an arrangement arrived at in August 1951 between Major Trollope, Magistrate for the Eastern Caprivi, and Mr. Dickinson, a District Commissioner in the Bechuanaland Protectorate, together with the correspondence that preceded and followed that arrangement; and an agreement concluded in December 1908 between the authorities of Botswana and South Africa for the conduct of a joint survey of the Chobe, together with the resultant survey report.

The Eason report (1912) (paras. 53-55)

The Court shares the view, put forward by Namibia and accepted by Botswana in the final version of its argument, that the Eason report and its surrounding circumstances cannot be regarded as representing "subsequent practice in the application of the treaty" of 1890, within the meaning of article 31, paragraph 3 (*b*), of the Vienna Convention.

The Trollope-Redman correspondence (1947-1951) (paras. 56-63)

In 1947, Mr. Ker, who was operating a transport business in Bechuanaland, planned to bring timber down the Chobe using the northern channel. He obtained the necessary permission from the competent official in the Caprivi Strip, Major Trollope, but also raised the matter with the Bechuanaland authorities. Following a joint report entitled "Boundary between the Bechuanaland Protectorate and the Eastern Caprivi Zipfel: Kasikili Island" produced by Major Trollope and Mr. Redman (District Commissioner at Kasane, Bechuanaland) in 1948, and forwarded to their respective authorities, there ensued an extended correspondence between those authorities.

In 1951 an exchange of correspondence between Mr. Dickinson, who had in the meantime succeeded Mr. Redman as District Commissioner at Kasane (Bechuanaland) and Major Trollope led to the following "gentlemen's agreement":

> "(*a*) That we agree to differ on the legal aspect regarding Kasikili Island, and the concomitant question of the Northern Waterway:
>
> (*b*) That the administrative arrangements which we hereafter make are entirely without prejudice to the rights of the Protectorate and the Strip to pursue the legal question mentioned in (*a*) should it at any time seem desirable to do so and will not be used as an argument that either territory has made any admissions or abandoned any claims; and
>
> (*c*) That, having regard to the foregoing, the position revert to what it was de facto before the whole question was made an issue in 1947—i.e., that Kasikili Island continue to be used by Caprivi tribesmen and that the Northern Waterway continue to be used as a 'free for all' thoroughfare."

Each side, however, made a caveat with regard to its position in any future controversy over the island.

The Court observes that each of the Parties to the present proceedings relies on the Trollope-Redman joint report and the correspondence relating thereto in support of its position. From its examination of the extended correspondence, the Court concludes that the above-mentioned events, which occurred between 1947 and 1951, demonstrate the absence of agreement between South Africa and Bechuanaland

with regard to the location of the boundary around Kasikili/Sedudu Island and the status of the island. Those events cannot therefore constitute "subsequent practice in the application of the treaty [of 1890] which establishes the agreement of the parties regarding its interpretation" (1969 Vienna Convention on the Law of Treaties, art. 31, para. 3 (*b*)). A fortiori, they cannot have given rise to an "agreement between the parties regarding the interpretation of the treaty or the application of its provisions" (ibid., art. 31, para. 3 (*a*)).

The joint survey of 1985 (paras. 64-68)

In October 1984, an incident during which shots were fired took place between members of the Botswana Defence Force and South African soldiers who were travelling by boat in the Chobe's southern channel. At a meeting held in Pretoria on 19 December 1984 between representatives of various South African and Botswanan ministries, it emerged that the incident had arisen out of differences of interpretation as to the precise location of the boundary around Kasikili/Sedudu Island. At this meeting, reference was made to the terms of the 1890 Treaty and it was agreed "that a joint survey should take place as a matter of urgency to determine whether the main Channel of the Chobe River is located to the north or the south of the Sedudu/ Kasikili Island". The joint survey was carried out at the beginning of July 1985. The conclusions of the survey report were as follows:

> "The main channel of the Chobe River now passes Sedudu/Kasikili Island to the west and to the north of it. (See annexed map C.)
>
> "The evidence available seems to point to the fact that this has been the case, at least, since 1912.
>
> "It was not possible to ascertain whether a particularly heavy flood changed the course of the river between 1890 and 1912. Capt. Eason of the Bechuanaland Protectorate Police states, on page 4 of part I of the report which has been referred to earlier, that floods occurred in 1899 and in June and July of 1909.
>
> "If the main channel of the river was ever situated to the south of the island, it is probable that erosion in the Sedudu Valley, the location of which can be seen in the annexed map C, has caused the partial silting up of the southern channel.
>
> "Air photographs showing the channels of the river in the vicinity of the island are available in the archives of the two national survey organisations. They were taken in 1925, 1943, 1972, 1977, 1981 and 1982. No substantial change in the position of the channels is evident from the photographs."

Having examined the subsequent correspondence between the South African and Botswana authorities, the Court finds that it cannot conclude therefrom that in 1984-1985 South Africa and Botswana had agreed on anything more than the despatch of the joint team of experts. In particular, the Court cannot conclude that the two States agreed in some fashion or other to recognize themselves as legally bound by the results of the joint survey carried out in July 1985. Neither the record of the meeting held in Pretoria on 19 December 1984 nor the experts' terms of reference serve to establish that any such agreement was reached. Moreover, the subsequent correspondence between the South African and Botswana authorities appear to deny the existence of any such agreement: in a note of 4 November 1985, Botswana called upon South Africa to accept the survey conclusions; not only did South Africa fail to accept them but on several occasions it emphasized the need for Botswana to

negotiate and agree on the question of the boundary with the relevant authorities of South-West Africa/Namibia, or indeed of the future independent Namibia.

Presence of Masubia on the island (paras. 71-75)

In the proceedings Namibia, too, invoked in support of its arguments the subsequent practice of the parties to the 1890 Treaty. In its Memorial it contended that this conduct

> "is relevant to the present controversy in three distinct ways. In the first place, it corroborates the interpretation of the Treaty. Second, it gives rise to a second and entirely independent basis for Namibia's claim under the doctrines concerning acquisition of territory by prescription, acquiescence and recognition. Finally, the conduct of the parties shows that Namibia was in possession of the island at the time of termination of colonial rule, a fact that is pertinent to the application of the principle of *uti possidetis*."

The subsequent practice relied on by Namibia consists of

> "[t]he control and use of Kasikili Island by the Masubia of Caprivi, the exercise of jurisdiction over the Island by the Namibian governing authorities, and the silence by Botswana and its predecessors persisting for almost a century with full knowledge of the facts ..."

The Court indicates that it will not at this point examine Namibia's argument concerning prescription. It will merely seek to ascertain whether the long-standing, unopposed, presence of Masubia tribespeople on Kasikili/Sedudu Island constitutes "subsequent practice in the application of the [1890] treaty which establishes the agreement of the parties regarding its interpretation" (1969 Vienna Convention on the Law of Treaties, art. 31, para. 3 (*b*)). To establish such practice, at least two criteria would have to be satisfied: first, that the occupation of the island by the Masubia was linked to a belief on the part of the Caprivi authorities that the boundary laid down by the 1890 Treaty followed the southern channel of the Chobe; and, second, that the Bechuanaland authorities were fully aware of and accepted this as a confirmation of the Treaty boundary.

There is nothing that shows, in the opinion of the Court, that the intermittent presence on the island of people from the Caprivi Strip was linked to territorial claims by the Caprivi authorities. It further seems to the Court that, as far as Bechuanaland, and subsequently Botswana, were concerned, the intermittent presence of the Masubia on the island did not trouble anyone and was tolerated, not least because it did not appear to be connected with interpretation of the terms of the 1890 Treaty. The Court thus finds that the peaceful and public use of Kasikili/ Sedudu Island, over a period of many years, by Masubia tribesmen from the Eastern Caprivi does not constitute "subsequent practice in the application of the [1890] treaty" within the meaning of article 31, paragraph 3 (*b*), of the Vienna Convention on the Law of Treaties.

*

The Court concludes from all of the foregoing that the subsequent practice of the parties to the 1890 Treaty did not result in any "agreement between the parties regarding the interpretation of the treaty or the application of its provisions", within the meaning of article 31, paragraph 3 (*a*), of the 1969 Vienna Convention on the Law of Treaties, nor did it result in any "practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation", within the meaning of subparagraph (*b*) of that same provision.

Maps as evidence (paras. 81-87)

Both Parties have submitted in evidence in support of their respective positions a large number of maps, dating back as far as 1880. Namibia points out that the majority of the maps submitted in these proceedings, even those emanating from British colonial sources and intended to show the boundaries of Bechuanaland, tend to place the boundary around Kasikili/Sedudu Island in the southern channel. Namibia relies on this as "a specialized form of 'subsequent practice' and ... also an aspect both of the exercise of jurisdiction and the acquiescence in it that matures into prescriptive title". Botswana for its part places less reliance on maps, pointing out, inter alia, that most of the early maps show too little detail, or are too small in scale, to be of value in this case. Botswana asserts, however, that the available maps and sketches indicate that, from the time the Chobe was surveyed with any particularity by European explorers from the 1860s onwards, a north channel around the island was known and regularly depicted. Botswana does not, however, attempt to demonstrate that this places the boundary in the northern channel. Rather, its overall position is that the map evidence is far less consistent in placing the boundary in the southern channel than Namibia claims.

The Court begins by recalling what the Chamber dealing with the *Frontier Dispute (Burkina Faso/Republic of Mali)* case had to say on the evidentiary value of maps:

> "maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts." (*I.C.J. Reports 1986*, p. 582, para. 54).

After examining the map evidence produced in this case, the Court considers itself unable to draw conclusions from it, in view of the absence of any map officially reflecting the intentions of the parties to the 1890 Treaty and of any express or tacit agreement between them or their successors concerning the validity of the boundary depicted in a map, as well as in the light of the uncertainty and inconsistency of the cartographic material submitted to it. That evidence cannot therefore "endors[e] a conclusion at which a court has arrived by other means unconnected with the maps" (*Frontier Dispute (Burkina Faso/Republic of Mali)*, *I.C.J. Reports 1986*, p. 583, para. 56), nor can it alter the results of the Court's textual interpretation of the 1890 Treaty.

"Centre of the main channel" or thalweg (paras. 88-89)

The foregoing interpretation of the relevant provisions of the 1890 Treaty leads the Court to conclude that the boundary between Botswana and Namibia around Kasikili/Sedudu Island provided for in this Treaty lies in the northern channel of the Chobe River.

According to the English text of the Treaty, this boundary follows the "centre" of the main channel; the German text uses the word "thalweg". The Court has already indicated that the parties to the 1890 Treaty intended these terms to be synonymous and that Botswana and Namibia had not themselves expressed any real difference of opinion on this subject.

It is moreover clear from the *travaux préparatoires* of the Treaty that there was an expectation of navigation on the Chobe by both contracting parties, and a common intention to exploit this possibility. Although the parties in 1890 used the terms "thalweg" and "centre of the channel" interchangeably, the former reflects more accurately the common intention to exploit navigation than does the latter. Accordingly this is the term that the Court will consider determinative in article III, paragraph 2.

Inasmuch as Botswana and Namibia agreed, in their replies to a question put by a Member of the Court, that the thalweg of the Chobe was formed by the line of deepest soundings in that river, the Court concludes that the boundary follows that line in the northern channel around Kasikili/Sedudu Island.

Acquisitive prescription (paras. 90-99)

The Court continues by observing that Namibia, however, claims title to Kasikili/Sedudu Island, not only on the basis of the 1890 Treaty but also, in the alternative, on the basis of the doctrine of prescription. Namibia argues that:

> "by virtue of continuous and exclusive occupation and use of Kasikili Island and exercise of sovereign jurisdiction over it from the beginning of the century, with full knowledge, acceptance and acquiescence by the governing authorities in Bechuanaland and Botswana, Namibia has prescriptive title to the island".

Botswana maintains that the Court cannot take into consideration Namibia's arguments relating to prescription and acquiescence as these are not included in the scope of the question submitted to it under the terms of the Special Agreement.

The Court notes that under the terms of article I of the Special Agreement it is asked to determine the boundary between Namibia and Botswana around Kasikili/ Sedudu Island and the legal status of the island "on the basis of the Anglo-German Treaty of 1 July 1890 and the rules and principles of international law". In the Court's view the Special Agreement, in referring to the "rules and principles of international law", authorizes the Court not only to interpret the 1890 Treaty in the light of those rules and principles but also to apply those rules and principles independently. The Court therefore considers that the Special Agreement does not preclude the Court from examining arguments relating to prescription put forward by Namibia.

After summarizing the arguments advanced by each of the Parties, the Court observes that they agree between themselves that acquisitive prescription is recognized in international law and that they further agree on the conditions under which title to territory may be acquired by prescription, but that their views differ on whether those conditions are satisfied in this casee. Their disagreement relates primarily to the legal inferences which may be drawn from the presence on Kasikili/ Sedudu Island of the Masubia of Eastern Caprivi: while Namibia bases its argument primarily on that presence, considered in the light of the concept of "indirect rule", to claim that its predecessors exercised title-generating State authority over the island, Botswana sees this as simply a "private" activity, without any relevance in the eyes of international law.

The Court continues by pointing out that for present purposes, it need not concern itself with the status of acquisitive prescription in international law or with the conditions for acquiring title to territory by prescription. The Court considers, for the reasons set out below, that the conditions cited by Namibia itself are not satisfied in this case and that Namibia's argument on acquisitive prescription therefore cannot be accepted.

The Court observes that it follows from its examination of the presence of the Masubia on the island (see above) that even if links of allegiance may have existed between the Masubia and the Caprivi authorities, it has not been established that the members of this tribe occupied the island *à titre de souverain*, i.e., that they were exercising functions of State authority there on behalf of those authorities. Indeed, the evidence shows that the Masubia used the island intermittently, according to the seasons and their needs, for exclusively agricultural purposes; this use, which began prior to the establishment of any colonial administration in the Caprivi Strip, seems to have subsequently continued without being linked to territorial claims on the part of the Authority administering the Caprivi. Admittedly, when, in 1947-1948, the question of the boundary in the region arose for the first time between the local authorities of Bechuanaland Protectorate and of South Africa, the Chobe's "main channel" around the island was said to be the northern channel, but the South African authorities relied on the presence of the Masubia on the island in order to maintain that they had title based on prescription. However, from then on the Bechuanaland authorities took the position that the boundary was located in the northern channel and that the island was part of the Protectorate; after some hesitation, they declined to satisfy South Africa's claims to the island, while at the same time recognizing the need to protect the interests of the Caprivi tribes. The Court infers from this, first, that for Bechuanaland, the activities of the Masubia on the island were an independent issue from that of title to the island and, second, that, as soon as South Africa officially claimed title, Bechuanaland did not accept that claim, which precluded acquiescence on its part.

In the Court's view, Namibia has not established with the necessary degree of precision and certainty that acts of State authority capable of providing alternative justification for prescriptive title, in accordance with the conditions set out by Namibia, were carried out by its predecessors or by itself with regard to Kasikili/Sedudu Island.

The legal status of the island and the two channels around it (paras. 100-103)

The Court's interpretation of article III (2) of the 1890 Treaty has led it to conclude that the boundary between Botswana and Namibia around Kasikili/Sedudu Island follows the line of deepest soundings in the northern channel of the Chobe. Since the Court has not accepted Namibia's argument on prescription, it follows that Kasikili/Sedudu Island forms part of the territory of Botswana.

The Court observes, however, that the Kasane Communique of 24 May 1992 records that the Presidents of Namibia and Botswana agreed and resolved that:

> "(*c*) existing social interaction between the people of Namibia and Botswana should continue;
>
> (*d*) the economic activities such as fishing shall continue on the understanding that fishing nets should not be laid across the river;

(*e*) navigation should remain unimpeded including free movement of tourists".

The Court, which by the terms of the Joint Agreement between the Parties is empowered to determine the legal status of Kasikili/Sedudu Island, concludes, in the light of the above-mentioned provisions of the Kasane Communique and in particular its subparagraph (*e*) and the interpretation of that subparagraph Botswana gave before the Court in this case, that the Parties have undertaken to one another that there shall be unimpeded navigation for craft of their nationals and flags in the channels of Kasikili/Sedudu Island. As a result, in the southern channel of Kasikili/Sedudu Island, the nationals of Namibia, and vessels flying its flag, are entitled to, and shall enjoy, a treatment equal to that accorded by Botswana to its own nationals and to vessels flying its own flag. Nationals of the two States, and vessels, whether flying the flag of Botswana or of Namibia, shall be subject to the same conditions as regards navigation and environmental protection. In the northern channel, each Party shall likewise accord the nationals of, and vessels flying the flag of, the other, equal national treatment.

Operative paragraph (para. 104)

"For these reasons,

THE COURT,

(1) By eleven votes to four,

Finds that the boundary between the Republic of Botswana and the Republic of Namibia follows the line of deepest soundings in the northern channel of the Chobe River around Kasikili/Sedudu Island;

IN FAVOUR: *President* Schwebel; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Higgins, Kooijmans;

AGAINST: *Vice-President* Weeramantry; *Judges* Fleischhauer, Parra-Aranguren, Rezek.

(2) By eleven votes to four,

Finds that Kasikili/Sedudu Island forms part of the territory of the Republic of Botswana;

IN FAVOUR: *President* Schwebel; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Higgins, Kooijmans;

AGAINST: *Vice-President* Weeramantry; *Judges* Fleischhauer, Parra-Aranguren, Rezek.

(3) Unanimously,

Finds that, in the two channels around Kasikili/Sedudu Island, the nationals of, and vessels flying the flags of, the Republic of Botswana and the Republic of Namibia shall enjoy equal national treatment."

*

Judges Ranjeva, Koroma and Higgins appended declarations to the Judgment of the Court. Judges Oda and Kooijmans appended separate opinions. Vice-President Weeramantry, Judges Fleischhauer, Parra-Aranguren and Rezek appended dissenting opinions.

(viii) *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*

By an order of 10 November 1998 (*I.C.J. Reports 1998*, p. 429), the Court, taking into account the provisions of the Special Agreement on the written pleadings, fixed 2 November 1999 and 2 March 2000 respectively as the time limits for the filing by each of the Parties of a Memorial and a Counter-Memorial.

By an Order of 14 September 1999 (*I.C.J. Reports 1999*, p. 1012), the Court, at a request jointly made by the Parties, extended the time limit for the filing of the Counter-Memorials to 2 July 2000.

The Memorials were filed within the time limit of 2 November 1999 as fixed by the Court's Order of 10 November 1998.

(ix) *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections *(Nigeria v. Cameroon)*

At a public sitting held on 25 March 1999, the Court delivered its judgment on the request for interpretation (*I.C.J. Reports 1999*, p. 31), a summary of which is given below, followed by the text of the operative paragraph:

History of the proceedings and submissions of the Parties (paras. 1-7)

The Court begins by recalling the history of the case and by quoting the submissions presented by Nigeria in its Application.

It continues by noting that the following submissions were presented by Cameroon in its written observations:

"On these grounds,

Having regard to the Request for Interpretation submitted by the Federal Republic of Nigeria dated 21 October 1998, the Republic of Cameroon makes the following submissions:

1. The Republic of Cameroon leaves it to the Court to decide whether it has jurisdiction to rule on a request for interpretation of a decision handed down following incidental proceedings and, in particular, with regard to a judgment concerning the preliminary objections raised by the defending Party;

2. The Republic of Cameroon requests the Court:

—*Primarily*:

To declare the request by the Federal Republic of Nigeria inadmissible; to adjudge and declare that there is no reason to interpret the Judgment of 11 June 1998;

—*Alternatively*:

To adjudge and declare that the Republic of Cameroon is entitled to rely on all facts; irrespective of their date, that go to establish the continuing violation by Nigeria of its international obligation; that the Republic of Cameroon may also rely on such facts to enable an assessment to be made of the damage it has suffered and the adequate reparation that is due to it."

The Court's jurisdiction over Nigeria's request for interpretation (paras. 8-11)

The Court first addresses the question of its jurisdiction over the request for interpretation submitted by Nigeria. Nigeria states that, in the case concerning the

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Cameroon alleged that Nigeria bore international responsibility "for certain incidents said to have occurred at various places at Bakassi and Lake Chad and along the length of the frontier between those two regions". Nigeria contends that the Court's judgment of 11 June 1998 does not specify "which of these alleged incidents are to be considered further as part of the merits of the case". Thus Nigeria maintains that the judgment "is unclear [as to] whether Cameroon was entitled at various times, after the submission of its Amended Application, to bring before the Court new incidents". Nigeria further emphasizes "the inadmissibility of treating as part of the dispute brought before the Court by the Applications of March and June 1994 alleged incidents occurring subsequently to June 1994". The judgment of 11 June 1998 was accordingly to be interpreted as meaning "that so far as concerns the international responsibility [of] Nigeria ... the dispute before the Court does not include any alleged incidents other than (at most) those specified in [the] Application ... and Additional Application".

Cameroon, for its part, recalls in its written observations that, in its judgment of 11 June 1998, the Court rejected seven of Nigeria's preliminary objections and stated that the eighth objection was not of an exclusively preliminary character; the Court further recognized that it had jurisdiction to adjudicate upon the dispute and found that the Application of Cameroon of 29 March 1994, as amended by the Additional Application of 6 June 1994, was admissible. Cameroon declares that the Parties "do not have to 'apply' such a judgment; they only have to take note of it". While leaving the question to the appreciation of the Court, it states that "there are very serious doubts about the possibility of bringing a request for interpretation of a judgment concerning preliminary objections".

The Court observes that Article 60 of the Statute provides: "The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party." By virtue of the second sentence of Article 60, the Court has jurisdiction to entertain requests for interpretation of any judgment rendered by it. This provision makes no distinction as to the type of judgment concerned. It follows, therefore, that a judgment on preliminary objections, just as well as a judgment on the merits, can be the object of a request for interpretation. However, "the second sentence of Article 60 was inserted in order, if necessary, to enable the Court to make quite clear the points which had been settled with binding force in a judgment, a request which has not that object does not come within the terms of this provision" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzow), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 11). In consequence any request for interpretation must relate to the operative part of the judgment and cannot concern the reasons for the judgment except insofar as these are inseparable from the operative part.

The Court then recalls that in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*, Nigeria had put forward a sixth preliminary objection "to the effect that there is no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions"; and that in the operative part of its judgment of 11 June 1998 the Court rejects the sixth preliminary objection. The reasons for this are set out in paragraphs 98 to 101 of the judgment. These deal in detail with Cameroon's rights as regards the presentation of "facts and legal considerations" that it might wish to put forward in support of its submissions seeking a ruling against Nigeria. These reasons are inseparable from the operative part of the judgment and in this regard the request therefore meets

the conditions laid down by Article 60 of the Statute in order for the Court to have jurisdiction to entertain a request for interpretation of a judgment.

The admissibility of Nigeria's request (paras. 12-16)

The Court then examines the admissibility of Nigeria's request. It observes that the question of the admissibility of requests for interpretation of the Court's judgments needs particular attention because of the need to avoid impairing the finality, and delaying the implementation, of these judgments. It is not without reason that Article 60 of the Statute lays down, in the first place, that judgments are "final and without appeal". The language and structure of Article 60 reflect the primacy of the principle of *res judicata*. That principle must be maintained.

The Court then recalls that in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*, Cameroon, in its Application as amended by its Additional Application, complained in 1994 "of grave and repeated incursions of Nigerian groups and armed forces into Cameroonian territory all along the frontier between the two countries". It further requested the Court to adjudge that the "internationally unlawful acts" alleged to have occurred in the Bakassi and Lake Chad regions involve the responsibility of Nigeria. Cameroon developed these submissions in its Memorial of 1995 and its observations of 1996, mentioning some incidents having occurred in other frontier areas or after the date of the Additional Application. To these submissions, Nigeria raised its sixth objection to admissibility. It considered that Cameroon must "essentially confine itself to the facts ... presented in its Application"; and concluded that any subsequent attempt to enlarge the scope of the case was inadmissible and that "additions" presented subsequently with a view to establishing Nigeria's responsibility must be disregarded.

The Court points out that by its judgement of 11 June 1998, it rejected Nigeria's sixth preliminary objection, and explained that "[t]he decision on Nigeria's sixth preliminary objection hinges upon the question of whether the requirements which an application must meet and which are set out in Article 38, paragraph 2, of the Rules of Court are met", adding that the term "succint" used in Article 38, paragraph 2, of the Rules does not mean "complete" and does not preclude later additions to the statement of the facts and grounds on which the claim is based. The Court reiterates that the question of the conditions for the admissibility of an application at the time of its introduction, and the question of the admissibility of the presentation of additonal facts and legal grounds, are two different things. In its judgment of 11 June 1998, the Court indicated that the limit of the freedom to present additional facts and legal considerations is that there must be no transformation of the dispute brought before the Court by the application into another dispute which is different in character. With regard to Nigeria's sixth preliminary objection, the judgment of 11 June 1998 has concluded that "[i]n this case, Cameroon has not so transformed the dispute" and that Cameroon's Application met the requirements of Article 38 of the Rules (*I.C.J. Reports 1998, p. 319*, para. 100). Thus, the Court made no distinction between "incidents" and "facts"; it found that additonal incidents constitute additional facts, and that their introduction in proceedings before the Court is governed by the same rules. In this respect there is no need for the Court to stress that it has and will strictly apply the principle of *audi alteram partem*. It follows from the foregoing that the Court has already clearly dealt with and rejected, in its judgment of 11 June 1998, the first of the three submissions (submission (*a*)) presented by Nigeria at the end of its request for interpretation.

The Court would therefore be unable to entertain this first submission without calling into question the effect of the judgment concerned as *res judicata.* The two other submissions ((*b*) and (*c*)), endeavour to remove from the Court's consideration elemtns of alw and fact which it has, in its judgment of 11 June 1998, already authorized Cameroon to present, or which Cameroon has not yet put forward. In either case, the Court would be unable to entertain these submissions. It follows from the foregoing that Nigeria's request for interpretation is inadmissible.

The Court, in view of the conclusions reached above, finds that there is no need for it to examine wheter there is, between the Parties, a "dispute as to the meaning or scope of the judgment" of 11 June 1998, as contemplated by Article 60 of the Statute.

Cost of the proceedings (para. 18)

With regard to Cameroon's request that Nigeria be charged with the additional costs caused to Cameroon by Nigeria's request, the Court sees no reason to depart in the present case from the general rule set forth in Article 64 of the Statute, which confirms the "basic principle regarding the question of costs in contentious proceedings before international tribunals, to the effect that each party shall bear its own" (*Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 212, para. 98).

Operative paragraph (para. 19):

"For these reasons,

THE COURT,

(1) By thirteen votes to three,

Declares inadmissible the request for interpretation of the Judgment of 11 June 1998 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections,* presented by Nigeria on 28 October 1998;

IN FAVOUR: *President* Schwebel; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans; *Judge ad hoc* Mbaye;

AGAINST: *Vice-President* Weeramantry; *Judge* Koroma; *Judge ad hoc* Ajibola;

(2) Unanimously,

Rejects Cameroon's request that Nigeria bear the additional costs caused to Cameroon by the above-mentioned request for interpretation."

*

Vice-President Weeramantry, Judge Koroma and Judge ad hoc Ajibola appended dissenting opinions to the Judgment (*I.C.J. Reports 1999*, pp. 42-48, 49-53 and 54-60).

(x) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*

By an Order of 25 November 1999 (*I.C.J. Reports 1999*, p. 1042), the Court, taking into account the agreement of the Parties, fixed 11 September 2000 as the

time limit for the filing of a Memorial by Guinea and 11 September 2001 for the filing of a Counter-Memorial by the Dermocratic Republic of the Congo.

(xi) *LaGrand (Germany v. United States of America)*

On 2 March 1999, the Federal Republic of Germany filed in the Registry of the Court an Application instituting proceedings against the United States of America for violations of the Vienna Convention on Consular Relations of 24 April 1963 allegedly committed by the United States.

In the Application Germany based the jurisdiction of the Court on article 36, paragraph 1, of the Statute of the Court and on article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, which accompanies the Vienna Convention on Consular Relations ("the Optional Protocol").

In the Application, Germany stated that in 1982 the authorities of the State of Arizona had detained two German nationals, Karl and Walter LaGrand; that these individuals were tried and sentenced to death without having been informed, as was required under article 36, subparagraph 1 (*b*), of the Vienna Convention, of their rights under that provision (which requires the competent authorities of a State party to advise, "without delay", a national of another State party whom such authorities arrest or detain of the national's right to consular assistance guaranteed by article 36). Germany also alleged that the failure to provide the required notification precluded it from protecting its nationals' interests in the United States provided for by articles 5 and 36 of the Vienna Convention at both the trial and the appeal level in the United States courts.

Germany stated that it had been, until very recently, the contention of the authorities of the State of Arizona that they had been unaware of the fact that Karl and Walter LaGrand were nationals of Germany; and that it had accepted that contention as true. However, during the proceedings before the Arizona Mercy Committee on 23 February 1999, the State Attorney admitted that the authorities of the State of Arizona had indeed been aware since 1982 that the two detainees were German nationals. Germany further stated that Karl and Walter LaGrand, finally with the assistance of German consular officers, did claim violations of the Vienna Convention before the Federal Court of First Instance; that that court, applying the municipal law doctrine of "procedural default", decided that, because the individuals in question had not asserted their rights under the Vienna Convention in the previous legal proceedings at the State level, they could not assert them in the Federal habeas corpus proceedings; and that the intermediate federal appellate court, last means of legal recourse in the United States available to them as of right, affirmed this decision.

The Federal Republic of Germany asked the Court to adjudge and declare:

"(1) That the United States, in arresting, detaining, trying, convicting and sentencing Karl and Walter LaGrand, as described in the preceding statement of facts, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, as provided by articles 5 and 36 of the Vienna Convention,

(2) That Germany is therefore entitled to reparation,

(3) That the United States is under an international legal obligation not to apply the doctrine of 'procedural default' or any other doctrine of national law, so as to preclude the exercise of the rights accorded under article 36 of the Vienna Convention; and

(4) That the United States is under an international obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against any other German national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1) The criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) The United States should provide reparation, in the form of compensation and satisfaction, for the execution of Karl LaGrand on 24 February 1999;

(3) The United States should restore the status quo ante in the case of Walter LaGrand, that is re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of that German national in violation of the United States' international legal obligation took place; and

(4) The United States should provide Germany a guarantee of the non-repetition of the illegal acts."

On 2 March 1999, Germany also submitted an urgent request for the indication of provisional measures.

In its request, Germany referred to the basis of jurisdiction of the Court invoked in its Application, and to the facts set out and the submissions made therein; it affirmed in particular that the United States had violated its obligations under the Vienna Convention.

Germany further recalled that Karl LaGrand had been executed on 24 February 1999, despite all appeals for clemency and numerous diplomatic interventions by the German Government at the highest level; that the date of execution of Walter LaGrand in the State of Arizona had been set for 3 March 1999; and that the request for the urgent indication of provisional measures was submitted in the interest of this latter individual. Germany emphasized that:

"The importance and sanctity of an individual human life are well established in international law. As recognized by article 6 of the International Covenant on Civil and Political Rights, every human being has the inherent right to life and this right shall be protected by law".

It added the following:

"Under the grave and exceptional circumstances of this case, and given the paramount interest of Germany in the life and liberty of its nationals, provisional measures are urgently needed to protect the life of Germany's national Walter LaGrand and the ability of this Court to order the relief to which Germany is entitled in the case of Walter LaGrand, namely restoration of the status quo ante. Without the provisional measures requested, the United States will execute Walter LaGrand—as it did execute his brother Karl—before this Court can consider the merits of Germany's claims, and Germany will be forever deprived of the opportunity to have the status quo ante restored in the event of a judgment in its favour."

Germany asked the Court to indicate that:

> "The United States should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of that Order";

it asked the Court moreover to consider its request as a matter of the greatest urgency "in view of the extreme gravity and immediacy of the threat of execution of a German citizen".

By a letter dated also 2 March 1999, the Vice-President of the Court addressed the Government of the United States in the following terms:

> "Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of [the] Government [of the United States] to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects".

At a public sitting held on 3 March 1999, the Court rendered its Order on the request for the indication of provisional measures (*I.C.J. Reports 1999*, p. 9), by which it indicated the following provisional measures:

(*a*) The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;

(*b*) The Government of the United States of America should transmit this Order to the Governor of the State of Arizona;

and decided that, until the Court had given its final decision, it would remain seized of the matters which formed the subject matter of the Order.

Judge Oda appended a declaration to the Order; President Schwebel appended a separate opinion.

By an Order of 5 March 1999 (*I.C.J. Reports 1999*, p. 28), the Court, taking into account the views of the Parties, fixed 16 September 1999 and 27 March 2000 as the time limits for the filing of the Memorial of Germany and the Counter-Memorial of the United States respectively. The Memorial and Counter-Memorial were filed within the prescribed time limits.

At the time of preparation of this Yearbook, the date for the opening of the public sittings to hear the oral arguments of the Parties had been fixed at 13 November 2000.

(xii–xix) *Legality of Use of Force* (*Yugoslavia v. Belgium*) (*Yugoslavia v. Canada*) (*Yugoslavia v. France*) (*Yugoslavia v. Germany*) (*Yugoslavia v. Italy*) (*Yugoslavia v. Netherlands*) (*Yugoslavia v. Portugal*) (*Yugoslavia v. United Kingdom*)

On 29 April 1999, the Federal Republic of Yugoslavia filed in the Registry of the Court Applications instituting proceedings against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom and the United States of America "for violation of the obligation not to use force".

In those Applications Yugoslavia defined the subject of the dispute as follows:

"The subject matter of the dispute are acts of the [respondent State concerned] by which it has violated its international obligation banning the use of force against another State, the obligation not to intervene in the internal affairs of another State, the obligation not to violate the sovereignty of another State, the obligation to protect the civilian population and civilian objects in wartime, the obligation to protect the environment, the obligation relating to free navigation on international rivers, the obligation regarding fundamental human rights and freedoms, the obligation not to use prohibited weapons, the obligation not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group."

As a basis for the jurisdiction of the Court, Yugoslavia referred, in the cases against Belgium, Canada, the Netherlands, Portugal, Spain and the United Kingdom, to Article 36, paragraph 2, of the Statute of the Court and to article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948 (hereinafter called the "Genocide Convention"); and, in the cases against France, Germany, Italy and the United States, to article IX of the Genocide Convention and to Article 38, paragraph 5, of the Rules of Court.

In each of the cases Yugoslavia requested the International Court of Justice to adjudge and declare that:

"—By taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;

—By taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e., the so-called 'Kosovo Liberation Army', the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;

—By taking part in attacks on civilian targets, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;

—By taking part in destroying or damaging monasteries, monuments of culture, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

—By taking part in the use of cluster bombs, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e., weapons calculated to cause unnecessary suffering;

—By taking part in the bombing of oil refineries and chemical plants, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

—By taking part in the use of weapons containing depleted uranium, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

—By taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

—By taking part in destroying bridges on international rivers, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

—By taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the [respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

—The [respondent State concerned] is responsible for the violation of the above international obligations;

—The [respondent State concerned] is obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;

—The [respondent State concerned] is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons;".

On the same day, 29 April 1999, Yugoslavia also submitted, in each of the cases, a request for the indication of provisional measures. It requested the Court to indicate the following measure:

> "The [respondent State concerned] shall cease immediately its acts of use of force and shall refrain from any act of threat or use of force against the Federal Republic of Yugoslavia."

Yugoslavia chose Mr. Milenko Kreća, Belgium; Mr. Patrick Duinslaeger, Canada; Mr. Marc Lalonde, Italy; Mr. Giorgio Gaja, Spain; and Mr. Santiago Torres Bernárdez to sit as judges ad hoc in the case.

Hearings on the requests for the indication of provisional measures were held between 10 and 12 May 1999.

At a public sitting held on 2 June 1999, the Vice-President of the Court, Acting President, read the Orders (*I.C.J. Reports 1999*, pp. 124, 259, 363, 422, 481, 542, 656, 761, 826 and 916), by which, in the cases *Yugoslavia v. Belgium*, *Yugoslavia v. Canada*, *Yugoslavia v. France*, *Yugoslavia v. Germany*, *Yugoslavia v. Italy*, *Yugoslavia v. Netherlands*, *Yugoslavia v. Portugal* and *Yugoslavia v. United Kingdom*, the Court rejected the requests for the indication of provisional measures submitted by that State and reserved the subsequent procedure for further decision. In the cases of *Yugoslavia v. Spain* and *Yugoslavia v. United States of America*, the Court—having found that it manifestly lacked jurisdiction to entertain Yugoslavia's Application; that it could not therefore indicate any provisional measure whatsoever in order to protect the rights invoked therein; and that, within a system of consensual jurisdiction, to maintain on the General List a case upon which it appeared certain that the Court would not be able to adjudicate on the merits would most assuredly not contribute to the sound administration of justice—rejected Yugoslavia's

requests for the indication of provisional measures and ordered that those cases be removed from the List.

In each of the cases *Yugoslavia v. Belgium*, *Yugoslavia v. Canada*, *Yugoslavia v. Netherlands* and *Yugoslavia v. Portugal*, Judge Koroma appended a declaration to the Order of the Court; Judges Oda, Higgins, Parra-Aranguren and Kooijmans appended separate opinions; and Vice-President Weeramantry, Acting President, Judges Shi and Vereshchetin and Judge ad hoc Kreća appended dissenting opinions.

In each of the cases *Yugoslavia v. France*, *Yugoslavia v. Germany* and *Yugoslavia v. Italy*, Vice-President Weeramantry, Acting President, and Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; Judges Oda and Parra-Aranguren appended separate opinions; and Judge ad hoc Kreća appended a dissenting opinion.

In the case *Yugoslavia v. Spain*, Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; and Judges Oda, Higgins, Parra-Aranguren and Kooijmans and Judge ad hoc Kreća appended separate opinions.

In the case *Yugoslavia v. United Kingdom*, Vice-President Weeramantry, Acting President, and Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; Judges Oda, Higgins, Parra-Aranguren and Kooijmans appended separate opinions; and Judge ad hoc Kreća appended a dissenting opinion.

In the case *Yugoslavia v. United States of America*, Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; Judges Oda and Parra-Aranguren appended separate opinions; and Judge ad hoc Kreća appended a dissenting opinion.

By Orders of 30 June 1999 (*I.C.J. Reports 1999*, pp. 988, 991, 994, 997, 1000, 1003, 1006, 1009) the Court, having ascertained the views of the Parties, fixed the time limits for the filing of the written pleadings in each of the eight cases maintained on the List: 5 January 2000 for the Memorial of Yugoslavia and 5 July 2000 for the Counter-Memorial of the respondent State concerned. The Memorial of Yugoslavia in each of the eight cases was filed within the prescribed time limit.

On 5 July 2000, within the time limit for the filing of its Counter-Memorial, each of the respondent States in the eight cases maintained on the Court's List (Belgium, Canada, France, Germany, Italy, Netherlands, Portugal and United Kingdom) raised certain preliminary objections of lack of jurisdiction and inadmissibility.

By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of that Article.

(xx-xxii) *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v. Burundi*) (*Democratic Republic of the Congo v. Uganda*) (*Democratic Republic of the Congo v. Rwanda*)

On 23 June 1999, the Democratic Republic of the Congo filed in the Registry of the Court Applications instituting proceedings against Burundi, Uganda and Rwanda respectively for "acts of armed aggression perpetrated in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity".

In its Applications, the Democratic Republic of the Congo contended that "such armed aggression ... ha[d] involved, inter alia, violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, violations of international

humanitarian law and massive human rights violations". By instituting proceedings, the Democratic Republic of the Congo was seeking "to secure the cessation of the acts of aggression directed against it, which constitute a serious threat to peace and security in central Africa in general and in the Great Lakes region in particular"; it was also seeking reparation for acts of intentional destruction and looting, and the restitution of national property and resources appropriated for the benefit of the respective respondent States.

In the cases *Democratic Republic of the Congo v. Burundi* and *Democratic Republic of the Congo v. Rwanda*, the Democratic Republic of the Congo invoked as bases for the jurisdiction of the Court Article 36, paragraph 1, of the Statute of the Court, the New York Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971, and also Article 38, paragraph 5, of the Rules of Court. This Article contemplates the situation where a State files an application against another State which has not accepted the jurisdiction of the Court. Article 36, paragraph 1, of the Statute provides that "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force".

In the case *Democratic Republic of the Congo v. Uganda*, the Democratic Republic of the Congo invoked as a basis for the jurisdiction of the Court the declarations by which both States have accepted the compulsory jurisdiction of the Court in relation to any other State accepting the same obligation (Art. 36, para. 2, of the Statute of the Court).

The Democratic Republic of the Congo requested the Court to:

"*Adjudge and declare that:*

(*a*) [The respondent State concerned] is guilty of an act of aggression within the meaning of Article 1 of resolution 3314 (XXIX) of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the Charter of the United Nations;

(*b*) Further, [the respondent State concerned] is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;

(*c*) More specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of article 56 of the Additional Protocol of 1977, [the respondent State concerned] has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;

(*d*) By shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, [the respondent State concerned] has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

(1) All armed forces [of the respondent State concerned] participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;

(2) [The respondent State concerned] shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;

(3) The Democratic Republic of the Congo is entitled to compensation from [the respondent State concerned] in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to [the respondent State concerned], in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed."

In each of the two cases concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Burundi) (Democratic Republic of the Congo v. Rwanda)*, the Court, by an Order of 21 October 1999 (*I.C.J. Reports 1999*, pp. 1018, 1025), taking into account the agreement of the Parties as expressed at a meeting between the President and the Agents of the Parties held on 19 October 1999, decided that the written proceedings should first address the questions of the jurisdiction of the Court to entertain the Application and of its admissibility and fixed 21 April 2000 as the time limit for the filing of a Memorial on those questions by Burundi and Rwanda respectively and 23 October 2000 for the filing of a Counter-Memorial by the Congo. The Memorials of Burundi and Rwanda were filed within the prescribed time limit.

In those two cases, Burundi chose Mr. Jean J. A. Salmon and Rwanda Mr. John Dugard to sit as judges ad hoc.

In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court, taking into account the agreement of the Parties as expressed at a meeting held with them by the President of the Court on 19 October 1999, fixed, by an Order of 21 October 1999 (*I.C.J. Reports 1999*, p. 1022), 21 July 2000 as the time limit for the filing of a Memorial by the Congo and 21 April 2001 for the filing of a Counter-Memorial by Uganda. The Memorial of the Congo was filed within the prescribed time limit.

On 19 June 2000 the Congo, in the same case against Uganda, filed a request for the indication of provisional measures, stating that "since 5 June last, the resumption of fighting between the armed troops of ... Uganda and another foreign army has caused considerable damage to the Congo and to its population" while "these tactics have been unanimously condemned, in particular by the United Nations Security Council".

In the request the Congo maintained that "despite promises and declarations of principle ... Uganda has pursued its policy of aggression, brutal armed attacks of oppression and looting" and that "this is moreover the third Kisangani war, coming after those of August 1999 and May 2000 and having been instigated by the Republic of Uganda ...". The Congo observed that these acts "represent just one further episode constituting evidence of the military and paramilitary intervention, and of occupation, commenced by the Republic of Uganda in August 1998". It further

stated that "each passing day causes to the Democratic Republic of the Congo and its inhabitants grave and irreparable prejudice" and that "it is urgent that the rights of the Democratic Republic of the Congo be safeguarded".

The Congo requested the Court to indicate the following provisional measures:

"(1) The Government of the Republic of Uganda must order its army to withdraw immediately and completely from Kisangani;

(2) The Government of the Republic of Uganda must order its army to cease forthwith all fighting or military activity on the territory of the Democratic Republic of the Congo and to withdraw immediately and completely from that territory, and must forthwith desist from providing any direct or indirect support to any State, group, organization, movement or individual engaged or planning to engage in military activities on the territory of the Democratic Republic of the Congo;

(3) The Government of the Republic of Uganda must take all measures in its power to ensure that any units, forces or agents are or could be under its authority, or which enjoy, or could enjoy its support, together with organizations or persons which could be under its control, authority or influence, desist forthwith from committing or inciting the commission of war crimes or any other oppressive or unlawful act against all persons on the territory of the Democratic Republic of the Congo;

(4) The Government of the Republic of Uganda must forthwith discontinue any act having the aim or effect of disrupting, interfering with or hampering actions intended to give the population of the occupied zones the benefit of their fundamental human rights, and in particular their rights to health and education;

(5) The Government of the Republic of Uganda must cease forthwith all illegal exploitation of the natural resources of the Democratic Republic of the Congo and any illegal transfer of assets, equipment or persons to its territory;

(6) The Government of the Republic of Uganda must henceforth respect in full the right of the Democratic Republic of the Congo to sovereignty, political independence and territorial integrity, and the fundamental rights and freedoms of all persons on the territory of the Democratic Republic of the Congo".

(xxiii) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Yugoslavia)*

On 2 July 1999 the Republic of Croatia filed in the Registry of the Court an Application instituting proceedings against the Federal Republic of Yugoslavia "for violations of the Convention on the Prevention and Punishment of the Crime of Genocide", alleged to have been committed between 1991 and 1995.

In its Application, Croatia contended that "by directly controlling the activity of its armed forces, intelligence agents, and various paramilitary detachments, on the territory of ... Croatia, in the Knin region, eastern and western Slovenia, and Dalmatia, [Yugoslavia] is liable [for] the 'ethnic cleansing' of Croatian citizens from these areas ... and is required to provide reparation for the resulting damage". Croatia went on to state that "in addition, by directing, encouraging, and urging

Croatian citizens of Serb ethnicity in the Knin region to evacuate the area in 1995, as ... Croatia reasserted its legitimate governmental authority ... [Yugoslavia] engaged in conduct amounting to a second round of 'ethnic cleansing' ".

The Application referred to Article 36, paragraph 1, of the Statute of the Court and to article IX of the Genocide Convention as the bases for the jurisdiction of the Court.

Croatia requested the Court to adjudge and declare:

"(*a*) That the Federal Republic of Yugoslavia has breached its legal obligations toward the People and Republic of Croatia under articles I, II (*a*), II (*b*), II (*c*), II (*d*), III (*a*), III (*b*), III (*c*), III (*d*), III (*e*), IV and V of the Genocide Convention;

(*b*) That the Federal Republic of Yugoslavia has an obligation to pay to the Republic of Croatia, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. The Republic of Croatia reserves the right to introduce to the Court at a future date a precise evaluation of the damages caused by the Federal Republic of Yugoslavia."

By an Order of 14 September 1999 (*I.C.J. Reports 1999*, p. 1015), the Court, taking account of the agreement of the Parties as expressed at a meeting between the President and the Agents of the Parties, held on 13 September 1999, fixed 14 March 2000 as the time limit for the filing of the Memorial of Croatia and 14 September 2000 for the filing of the Counter-Memorial of Yugoslavia.

(xxiv) *Aerial Incident of 10 August 1999 (Pakistan v. India)*

On 21 September 1999, the Islamic Republic of Pakistan filed in the Registry of the Court an Application instituting proceedings against the Republic of India in respect of a dispute concerning the destruction on 10 August 1999 of a Pakistan aircraft.

In its Application Pakistan founded the jurisdiction of the Court on Article 36, paragraphs 1 and 2, of the Statute of the Court and the declarations whereby the two Parties have recognized the compulsory jurisdiction of the Court.

By letter of 2 November 1999, the Agent of India notified the Court that his Government "wish[ed] to indicate its preliminary objections to the assumption of jurisdiction by the ... Court ... on the basis of Pakistan's Application". Those objections were set out in a note appended to the letter.

At a meeting held between the President of the Court and the representatives of the Parties on 10 November 1999, pursuant to Article 31 of the Rules of Court, the Parties provisionally agreed to request the Court to determine separately the question of its jurisdiction. That agreement was subsequently confirmed in writing by both Parties.

By an Order of 19 November 1999 (*I.C.J. Reports 1999*, p. 1038), the Court, taking into account the agreement reached between the Parties, decided that the written pleadings should first be addressed to the question of the jurisdiction of the Court to entertain the Application and fixed 10 January 2000 and 28 February 2000, respectively, as the time limits for the filing of a Memorial by Pakistan and a Counter-Memorial by India on that question. The Memorial and the Counter-Memorial were filed within the prescribed time limits.

Pakistan chose Mr. Syed Sharif Uddin Pirzada and India Mr. B. P. Jeevan Reddy to sit as judges ad hoc.

(xxv) *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*

On 8 December 1999, the Republic of Nicaragua filed in the Registry of the Court an Application instituting proceedings against the Republic of Honduras in respect of a dispute concerning the delimitation of the maritime zones appertaining to each of those States in the Caribbean Sea.

In its Application, Nicaragua stated, inter alia, that it had for decades "maintained the position that its maritime Caribbean border with Honduras has not been determined", while Honduras's position was said to be that:

> "there in fact exists a delimitation line that runs straight easterly on the parallel of latitude from the point fixed in [an Arbitral Award of 23 December 1906 made by the King of Spain concerning the land boundary between Nicaragua and Honduras, which was found valid and binding by the International Court of Justice on 18 November 1960] on the mouth of the Coco river".

According to Nicaragua, "the position adopted by Honduras ... has brought repeated confrontations and mutual capture of vessels of both nations in and around the general border area". Nicaragua further stated that "diplomatic negotiations have failed".

Nicaragua therefore requested the Court:

> "to determine the course of the single maritime boundary between areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary".

As a basis for the Court's jurisdiction, Nicaragua invoked article XXXI of the American Treaty on Pacific Settlement (officially known as the "Pact of Bogotá"), signed on 30 April 1948, to which both Nicaragua and Honduras are parties, as well as the declarations under Article 36, paragraph 2, of the Statute of the Court, by which both States have accepted the compulsory jurisdiction of the Court.

(*b*) Request for advisory opinion

Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights

At a public sitting held on 29 April 1999, the Court delivered its advisory opinion (*I.C.J. Reports 1999*, p. 62), a summary of which is given below, followed by the text of the operative paragraph.

Review of the proceedings and summary of facts (paras. 1-21)

After outlining the successive stages of the proceedings (paras. 1-9), the Court observes that in its decision 1998/297, the Economic and Social Council asked the Court to take into account, for purposes of the advisory opinion requested, the "circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General"

(E/1998/94). The text of those paragraphs is then reproduced. They set out the following.

In 1946, the General Assembly adopted, pursuant to Article 105, para. 3, of the Charter, the Convention on the Privileges and Immunities of the United Nations (the Convention), to which 137 Member States have become parties and provisions of which have been incorporated by reference into many hundreds of agreements relating to the United Nations and its activities. The Convention is, inter alia, designed to protect various categories of persons, including "experts on mission for the United Nations", from all types of interference by national authorities. In particular, section 22 (*b*) of article VI of the Convention provides:

> "*Section 22*: Experts (other than officials coming within the scope of article (V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including time spent on journeys in connection with their missions. In particular they shall be accorded:
>
> (*b*) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations."

In its advisory opinion of 14 December 1989 (in the so-called "*Mazilu*" case), the Court held that a Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights was an "expert on mission" within the meaning of article VI of the Convention.

The Commission on Human Rights in 1994 appointed Dato' Param Cumaraswamy, a Malaysian jurist, as the Commission's Special Rapporteur on the independence of judges and lawyers. His mandate consists of tasks including, inter alia, to enquire into substantial allegations concerning, and to identify and record attacks on, the independence of the judiciary, lawyers and court officials. Mr. Cumaraswamy has submitted four reports to the Commission on the execution of his mandate. After the third report containing a section on the litigation pending against him in the Malaysian civil courts, the Commission, in April 1997, renewed his mandate for an additional three years.

As a result of an article published on the basis of an interview which the Special Rapporteur gave to a magazine (*International Commercial Litigation*) in November 1995, two commercial companies in Malaysia asserted that the said article contained defamatory words that had "brought them into public scandal, odium and contempt". Each company filed a suit against him for damages amounting to M$ 30 million (approximately US$ 12 million each), "including exemplary damages for slander".

Acting on behalf of the Secretary-General, the Legal Counsel of the United Nations considered the circumstances of the interview and of the controverted passages of the article and determined that Dato' Param Cumaraswamy had been interviewed in his official capacity as Special Rapporteur on the independence of judges and lawyers, that the article clearly referred to his United Nations capacity and to the Special Rapporteur's global mandate to investigate allegations concerning the independence of the judiciary and that the quoted passages related to such allegations. On 15 January 1997, the Legal Counsel, in a note verbale, "requested the competent

Malaysian authorities to promptly advise the Malaysian courts of the Special Rapporteur's immunity from legal process" with respect to that particular complaint. On 20 January 1997, the Special Rapporteur filed an application in the High Court of Kuala Lumpur (the trial court in which the suit had been filed) to set aside and/or strike out the plaintiffs' writ, on the ground that the words that were the subject of the suits had been spoken by him in the course of performing his mission for the United Nations as Special Rapporteur on the independence of judges and lawyers. The Secretary-General issued a note on 7 March 1997 confirming that "the words which constitute the basis of plaintiffs' complaint in this case were spoken by the Special Rapporteur in the course of his mission" and that the Secretary-General "*therefore maintains that Dato' Param Cumaraswamy is immune from legal process* with respect thereto". The Special Rapporteur filed the note in support of his above-mentioned application.

In spite of representations that had been made by the Office of Legal Affairs, a certificate filed by the Malaysian Minister for Foreign Affairs with the trial court *failed to refer in any way to the note that the Secretary-General had issued a few* days earlier and that had in the meantime been filed with the court, nor did it indicate that in this respect, that is, in deciding whether particular words or acts of an expert fell within the scope of his mission, the determination could exclusively be made by the Secretary-General, and that such determination had conclusive effect and therefore had to be accepted as such by the court. In spite of repeated requests by the Legal Counsel, the Minister for Foreign Affairs refused to amend his certificate or to supplement it in the manner urged by the United Nations.

On 28 June 1997, the competent judge of the Malaysian High Court for Kuala Lumpur concluded that she was "unable to hold that the Defendant is absolutely protected by the immunity he claims", in part because she considered that the Secretary-General's note was merely "an opinion" with scant probative value and no binding force upon the court and that the Minister for Foreign Affairs' certificate "would appear to be no more than a bland statement as to a state of fact pertaining to the Defendant's status and mandate as a Special Rapporteur and appears to have room for interpretation". The Court ordered that the Special Rapporteur's motion be dismissed with costs, that costs be taxed and paid forthwith by him and that he file and serve his defence within 14 days. On 8 July, the Court of Appeal dismissed Mr. Cumaraswamy's motion for a stay of execution.

In July 1997, the Legal Counsel called upon the Malaysian Government to intervene in the proceedings so that the burden of any further defence, including any expenses and taxed costs resulting therefrom, could be assumed by the Government; to hold Mr. Cumaraswamy harmless in respect of the expenses he had already incurred or that were being taxed to him in respect of the proceedings so far; and, so as to prevent the accumulation of additional expenses and costs and the further need to submit a defence until the matter of his immunity was definitively resolved between the United Nations and the Government, to support a motion to have the High Court proceedings stayed until such resolution. The Legal Counsel referred to the provisions for the settlement of differences arising out of the interpretation and application of the 1946 Convention that might arise between the Organization and a Member State, set out in section 30 of the Convention, and indicated that if the Government decided that it could not or did not wish to protect and to hold harmless the Special Rapporteur in the indicated manner, a difference within the meaning of those provisions might be considered to have arisen between the Organization and the Government of Malaysia.

Section 30 of the Convention provides as follows:

"*Section 30*: All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

On 10 July, yet another lawsuit was filed against the Special Rapporteur. On 11 July, the Secretary-General issued a note corresponding to the one of 7 March 1997 and also communicated a note verbale with essentially the same text to the Permanent Representative of Malaysia to the United Nations with the request that it be presented formally to the competent Malaysian court by the Government. On 23 October and 21 November 1997, new plaintiffs filed third and fourth lawsuits against the Special Rapporteur. On 27 October and 22 November 1997, the Secretary-General issued identical certificates of the Special Rapporteur's immunity.

On 7 November 1997, the Secretary-General advised the Prime Minister of Malaysia that a difference might have arisen between the United Nations and the Government of Malaysia and about the possibility of resorting to the International Court of Justice pursuant to section 30 of the Convention. Nonetheless on 19 February 1998, the Federal Court of Malaysia denied Mr. Cumaraswamy's application for leave to appeal stating that he was neither a sovereign nor a full-fledged diplomat but merely "an unpaid, part-time provider of information".

The Secretary-General then appointed a Special Envoy, Maître Yves Fortier of Canada, who, after two official visits to Kuala Lumpur, and after negotiations to reach an out-of-court settlement had failed, advised that the matter should be referred to the Economic and Social Council to request an advisory opinion from the International Court of Justice. The United Nations had exhausted all efforts to reach either a negotiated settlement or a joint submission through the Council to the International Court of Justice. In that connection, the Government of Malaysia had acknowledged the Organization's right to refer the matter to the Council to request an advisory opinion in accordance with section 30 of the Convention, advised the Secretary-General's Special Envoy that the United Nations should proceed to do so and indicated that, while it would make its own presentations to the International Court of Justice, it did not oppose the submission of the matter to that Court through the Council.

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After reproducing paragraphs 1 to 15 of the Secretary-General's note, the Court then refers to the dossier of documents submitted to it by the Secretary-General, containing additional information that bears on an understanding of the request to the Court, concerning the context in which Mr. Cumaraswamy was asked to give his comments; concerning the proceedings against Mr. Cumaraswamy in the High Court of Kuala Lumpur, which did not pass upon Mr. Cumaraswamy's immunity *in limine litis*, but held that it had jurisdiction to hear the case before it on the merits, including making a determination of whether Mr. Cumaraswamy was entitled to any immunity, a decision upheld by both the Court of Appeal and the Federal Court of Malaysia; and concerning the regular reports, which the Special Rapporteur made to the Commission on Human Rights and in which he reported on the lawsuits initi-

ated against him. The Court further refers to the consideration and adoption without a vote by the Council of the draft decision requesting the Court to give an advisory opinion on the question formulated therein, and the fact that at that meeting, the observer for Malaysia confirmed his previous criticism of the Secretary-General's note, but made no comment on the terms of the question to be put to the Court as now formulated by the Council. Finally, Malaysia's information on the status of proceedings in the Malaysian courts is referred to.

The Court's power to give an advisory opinion (paras. 22-27)

The Court begins by observing that this is the first time that the Court has received a request for an advisory opinion that refers to article VIII, section 30, of the General Convention, quoted above.

This section provides for the exercise of the Court's advisory function in the event of a difference between the United Nations and one of its Members. The existence of such a difference does not change the advisory nature of the Court's function, which is governed by the terms of Article 96 of the Charter and Article 65 of the Statute. A distinction should thus be drawn between the advisory nature of the Court's task and the particular effects that parties to an existing dispute may wish to attribute, in their mutual relations, to an advisory opinion of the Court, which, "as such, ... has no binding force". These particular effects, extraneous to the Charter and the Statute which regulate the functioning of the Court, are derived from separate agreements; in the present case article VIII, section 30, of the General Convention provides that "[t]he opinion given by the Court shall be accepted as decisive by the parties". That consequence has been expressly acknowledged by the United Nations and by Malaysia.

The power of the Court to give an advisory opinion is derived from Article 96, paragraph 2, of the Charter and from Article 65 of the Statute. Both provisions require that the question forming the subject matter of the request should be a "legal question". This condition is satisfied in the present case, as all participants in the proceedings have acknowledged, because the advisory opinion requested relates to the interpretation of the General Convention, and to its application to the circumstances of the case of the Special Rapporteur, Dato' Param Cumaraswamy.

Article 96, paragraph 2, of the Charter also requires that the legal questions forming the subject matter of advisory opinions requested by authorized organs of the United Nations and specialized agencies shall arise "within the scope of their activities". The fulfilment of this condition has not been questioned by any of the participants in the present proceedings. The Court finds that the legal questions submitted by the Council, in its request concern the activities of the Commission on Human Rights since they relate to the mandate of its Special Rapporteur appointed "to inquire into substantial allegations concerning, and to identify and record attacks on, the independence of the judiciary, lawyers and court officials".

Discretionary power of the Court (paras. 28-30)

As the Court held in its advisory opinion of 30 March 1950, the permissive character of Article 65 of the Statute "gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the Request" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 72). In the present case, the Court, having established its jurisdiction, finds no compelling reasons not

to give the advisory opinion requested by the Council. Moreover, no participant in these proceedings questioned the need for the Court to exercise its advisory function in this case.

The question on which the opinion is requested (paras. 31-37)

As the Council indicated in the preamble to its decision 1998/297, that decision was adopted by the Council on the basis of the note submitted by the Secretary-General on "Privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers". Paragraph 1 of the operative part of the decision refers expressly to paragraphs 1 to 15 of that note but not to paragraph 21, containing two questions that the Secretary-General proposed submitting to the Court. The Court would point out that the wording of the question submitted by the Council is quite different from that proposed by the Secretary-General.

Participants in these proceedings, including Malaysia and other States, have advanced differing views as to what is the legal question to be answered by the Court. The Court observes that it is for the Council, and not for a Member State or the Secretary-General, to formulate the terms of a question that the Council wishes to ask. Accordingly, the Court will now answer the question as formulated by the Council.

Applicability of article VI, section 22, of the General Convention to Special Rapporteurs of the Commission on Human Rights (paras. 38-46)

The Court initially examines the first part of the question laid before the Court by the Council, which is:

> "the legal question of the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General ..."

From the deliberations which took place in the Council it is clear that the request of the Council does not only pertain to the threshold question whether Mr. Cumaraswamy was and is an expert on mission in the sense of article VI, section 22, of the General Convention but, in the event of an affirmative answer to this question, to the consequences of that finding in the circumstances of the case. The Court notes that Malaysia became a party to the General Convention, without reservation, on 28 October 1957. [Part of section 22 of article VI of that Convention is quoted above.]

The Court then recalls that in its advisory opinion of 14 December 1989 (in the so-called "*Mazilu*" case) it stated:

> "The purpose of section 22 is ... evident, namely, to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization, and to guarantee them 'such privileges and immunities as are necessary for the independent exercise of their functions'. The essence of the matter lies not in their administrative position but in the nature of their mission." (*I.C.J. Reports 1989*, p. 194, para. 47)

In the same advisory opinion, it concluded that a Special Rapporteur who is appointed by the Subcommission on Prevention of Discrimination and Protection of

Minorities and is entrusted with a research mission must be regarded as an expert on mission within the meaning of article VI, section 22, of the General Convention.

The Court finds that the same conclusion must be drawn with regard to Special Rapporteurs appointed by the Commission on Human Rights, of which the Sub-commission is a subsidiary organ. It observes that Special Rapporteurs of the Commission usually are entrusted not only with a research mission but also with the task of monitoring human rights violations and reporting on them. But what is decisive is that they have been entrusted with a mission by the United Nations and are therefore entitled to the privileges and immunities provided for in article VI, section 22, that safeguard the independent exercise of their functions. After examining Mr. Cumaraswamy's mandate, the Court finds that he must be regarded as an expert on mission within the meaning of article VI, section 22, as from 21 April 1994, that by virtue of this capacity the provisions of this section were applicable to him at the time of his statements at issue, and that they continue to be applicable.

The Court finally observes that Malaysia has acknowledged that Mr. Cumaraswamy, as Special Rapporteur of the Commission, is an expert on mission and that such experts enjoy the privileges and immunities provided for under the General Convention in their relations with States parties, including those of which they are nationals or on the territory of which they reside. Malaysia and the United Nations are in full agreement on these points, as are the other States participating in the proceedings.

Applicability of article VI, section 22, of the General Convention in the specific circumstances of the case (paras. 47-56)

The Court then considers the question whether the immunity provided for in section 22 (*b*) applies to Mr. Cumaraswamy in the specific circumstances of the case; namely, whether the words used by him in the interview, as published in the article in *International Commercial Litigation* (November 1995 issue), were spoken in the course of the performance of his mission, and whether he was therefore immune from legal process with respect to these words.

In the process of determining whether a particular expert on mission is entitled, in the prevailing circumstances, to the immunity provided for in section 22 (*b*), the Secretary-General of the United Nations has a pivotal role to play. The Secretary-General, as the chief administrative officer of the Organization, has the authority and the responsibility to exercise the necessary protection where required. Article VI, section 23, of the General Convention provides that "[p]rivileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves". In exercising protection of United Nations experts, the Secretary-General is therefore protecting the mission with which the expert is entrusted. In that respect, the Secretary-General has the primary responsibility and authority to protect the interests of the Organization and its agents, including experts on mission.

The determination whether an agent of the Organization has acted in the course of the performance of his mission depends upon the facts of a particular case. In the present case, the Secretary-General, or the Legal Counsel of the United Nations on his behalf, has on numerous occasions informed the Government of Malaysia of his finding that Mr. Cumaraswamy had spoken the words quoted in the article in *International Commercial Litigation* in his capacity as Special Rapporteur of the Commission and that he consequently was entitled to immunity from "every kind" of legal process. The Secretary-General was reinforced in this view by the fact that

it has become standard practice of Special Rapporteurs of the Commission to have contact with the media.

The Court notes that Mr. Cumaraswamy was explicitly referred to several times in the article "Malaysian Justice on Trial" in *International Commercial Litigation* in his capacity as United Nations Special Rapporteur on the independence of judges and lawyers, and further that in its various resolutions the Commission took note of the Special Rapporteur's reports and of his methods of work. In 1997, it extended his mandate for another three years. The Commission presumably would not have so acted if it had been of the opinion that Mr. Cumaraswamy had gone beyond his mandate and had given the interview to *International Commercial Litigation* outside the course of his functions. Thus the Secretary-General was able to find support for his findings in the Commission's position.

The Court concludes that it is not called upon in the present case to pass upon the aptness of the terms used by the Special Rapporteur or his assessment of the situation. In any event, in view of all the circumstances of this case, elements of which are set out in paragraphs 1 to 15 of the note by the Secretary-General, the Court is of the opinion that the Secretary-General correctly found that Mr. Cumaraswamy, in speaking the words quoted in the article in *International Commercial Litigation*, was acting in the course of the performance of his mission as Special Rapporteur of the Commission. Consequently, article VI, section 22 (*b*) of the General Convention is applicable to him in the present case and affords Mr. Cumaraswamy immunity from legal process of every kind.

Legal obligations of Malaysia in the case (paras. 57-65)

The Court then deals with the second part of the Council's question, namely, "the legal obligations of Malaysia in this case". Rejecting Malaysia's argument that it is premature to deal with that question, the Court points out that the difference which has arisen between the United Nations and Malaysia originated in the failure of the Government of Malaysia to inform the competent Malaysian judicial authorities of the Secretary-General's finding that Mr. Cumaraswamy had spoken the words at issue in the course of the performance of his mission and was therefore entitled to immunity from legal process. It is as from the time of that omission that the question before the Court must be answered.

As the Court has observed, the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect those agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the Government of a Member State of his finding and, where appropriate, to request it to act accordingly and, in particular, to request it to bring his finding to the knowledge of the local courts if acts of an agent have given or may give rise to court proceedings. That finding, and its documentary expression, creates a presumption of immunity which can only be set aside for the most compelling reasons and is thus to be given the greatest weight by national courts. The governmental authorities of a party to the General Convention are therefore under an obligation to convey such information to the national courts concerned, since a proper application of the Convention by them is dependent on such information. Failure to comply with this obligation, among others, could give rise to the institution of proceedings under article VIII, section 30, of the General Convention.

The Court concludes that the Government of Malaysia had an obligation, under Article 105 of the Charter and under the General Convention, to inform its courts of the position taken by the Secretary-General. According to a well-established rule of international law, the conduct of any organ of a State must be regarded as an act of that State. Because the Government did not transmit the Secretary-General's finding to the competent courts, and the Minister for Foreign Affairs did not refer to it in his own certificate, Malaysia did not comply with the above-mentioned obligation.

Section 22 (*b*) of the General Convention explicitly states that experts on mission shall be accorded immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. By necessary implication, questions of immunity are therefore preliminary issues which must be expeditiously decided *in limine litis*. This is a generally recognized principle of law, and Malaysia was under an obligation to respect it. The Malaysian courts did not rule *in limine litis* on the immunity of the Special Rapporteur, thereby nullifying the essence of the immunity rule contained in section 22 (*b*). Moreover, costs were taxed to Mr. Cumaraswamy while the question of immunity was still unresolved. As indicated above, the conduct of an organ of a State, even an organ independent of the executive power, must be regarded as an act of that State. Consequently, Malaysia did not act in accordance with its obligations under international law.

The Court adds that the immunity from legal process to which it finds Mr. Cumaraswamy entitled entails holding Mr. Cumaraswamy financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs.

It further observes that, according to article VIII, section 30, of the General Convention, the opinion given by the Court shall be accepted as decisive by the parties to the dispute. Malaysia has acknowledged its obligations under section 30. Since the Court holds that Mr. Cumaraswamy is an expert on mission who under section 22 (*b*) is entitled to immunity from legal process, the Government of Malaysia is obligated to communicate this advisory opinion to the competent Malaysian courts, in order that Malaysia's international obligations be given effect and Mr. Cumaraswamy's immunity be respected.

Finally, the Court points out that the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity. The United Nations may be required to bear responsibility for the damage arising from such acts. However, as is clear from article VIII, section 29, of the General Convention, such compensation claims against the United Nations shall not be dealt with by national courts but shall be settled in accordance with the appropriate modes of settlement that the "United Nations shall make provisions for" pursuant to section 29. The Court furthermore considers that it need hardly be said that all agents of the United Nations, in whatever official capacity they act, must take care not to exceed the scope of their functions, and should so comport themselves as to avoid claims against the United Nations.

Operative paragraph (para. 67):

"For these reasons,

THE COURT

Is of the opinion:

(1) (*a*) By fourteen votes to one,

That article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judge* Koroma;

(*b*) By fourteen votes to one,

That Dato' Param Cumaraswamy is entitled to immunity from legal process of every kind for the words spoken by him during an interview as published in an article in the November 1995 issue of *International Commercial Litigation*;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry: *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judge* Koroma;

(2) (*a*) By thirteen votes to two,

That the Government of Malaysia had the obligation to inform the Malaysian courts of the finding of the Secretary-General that Dato' Param Cumaraswamy was entitled to immunity from legal process;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry: *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judges* Oda, Koroma;

(*b*) By fourteen votes to one,

That the Malaysian courts had the obligation to deal with the question of immunity from legal process as a preliminary issue to be expeditiously decided *in limine litis;*

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judge* Koroma;

(3) Unanimously,

That Dato' Param Cumaraswamy shall be held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs;

(4) By thirteen votes to two,

That the Government of Malaysia has the obligation to communicate this advisory opinion to the Malaysian courts, in order that Malaysia's international obligations be given effect and Dato' Param Cumaraswamy's immunity be respected;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: *Judges* Oda, Koroma."

*

Vice-President Weeramantry and Judges Oda and Rezek appended separate opinions to the Advisory Opinion (*I.C.J. Reports 1999*, pp. 92-98, 99-108 and 109-110); Judge Koroma appended a dissenting opinion (ibid., pp. 111-122).

Consideration by the General Assembly

The General Assembly, by its decision 54/411 of 26 October 1999, took note of the report of the International Court of Justice.[166]

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6. INTERNATIONAL LAW COMMISSION[167]

(*a*) Fifty-first session of the Commission[168]

The International Law Commission held its fifty-first session at its seat at the United Nations Office at Geneva, from 3 May to 23 July 1999.

Concerning the topic "Nationality in relation to the succession of States", the Commission adopted on second reading the draft preamble and the set of 26 draft articles and recommended to the General Assembly their adoption in the form of a declaration.

Regarding the topic "State responsibility", the Commission considered the second report of the Special Rapporteur which dealt with chapters III, IV and V of part one of the draft articles, and referred the articles to the Drafting Committee.

With respect to the topic "Reservations to treaties", the Commission continued its consideration of the third report of the Special Rapporteur concerning the definition of reservations and interpretative declarations, and adopted 20 draft guidelines pertaining to the first chapter of the Guide to Practice.

With regard to the topic "Jurisdictional immunities of States and their property", the Commission established a Working Group on the topic and entrusted it with the task of preparing preliminary comments as requested by the General Assembly in paragraph 2 of its resolution 53/98 of 8 December 1998.

Regarding the topic "Unilateral acts of States", the Commission examined the second report of the Special Rapporteur and subsequently agreed to take as the basic focus for its study on the topic, and as a starting point for the gathering of State practice thereon, the following concept: "A unilateral statement by a State by which such State intends to produce legal effects in its relations to one or more States or international organizations and which is notified or otherwise made known to the State or organization concerned".

Concerning the topic "International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities)", the Commission considered the second report of the Special Rapporteur with respect to its future work on the topic and decided to defer consideration of the question of international liability, pending completion of the second reading of the draft articles on the prevention of transboundary damage from hazardous activities (chap. IX).

With respect to the topic "Diplomatic protection", the Commission appointed Mr. Christopher J. R. Dugard Special Rapporteur for the topic.

(*b*) Consideration by the General Assembly

The General Assembly, at its fifty-fourth session, on the recommendation of the Sixth Committee, adopted resolution 54/111 of 9 December 1999, in which it took note of the report of the International Law Commission on the work of its fifty-first session.[169]

In its resolution 54/101, also of 9 December 1999, the General Assembly, having considered the report presented to the Sixth Committee by the Chairman of the open-ended working group of the Committee established under resolution 53/98,[170] and having considered also the report of the Secretary-General,[171] took note of the report of the Working Group on Jurisdictional Immunities of States and Their Property of the International Law Commission, set forth in the annex to the report of the Commission on the work of its fifty-first session.

And by its resolution 54/112 of the same date, the General Assembly decided to include in the provisional agenda of its fifty-fifth session an item entitled "Nationality of natural persons in relation to the succession of States", with a view to the consideration of the draft articles and their adoption or a declaration at that session.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[172]

(*a*) Thirty-second session of the Commission[173]

The United Nations Commission on International Trade Law held its thirty-second session at Vienna from 17 May to 4 June 1999, adopting its report on 4 June 1999.

The Commission had before it the complete draft of the legislative guide on privately financed infrastructure projects,[174] which was viewed as being of particular interest to those countries that strove to attract foreign investment capital in order to finance such projects. It was decided that when discussing the legislative recommendations contained in the draft chapters, the Commission should keep under consideration the desirability of formulating model legislative provisions, and in that connection identifying any issues for which the formulation of model legislative provisions would increase the value of the guide.

Concerning the draft uniform rules on electronic signatures, the Commission had before it the reports of the Working Group on the work of its thirty-third and thirty-fourth sessions.[175] Other suggestions for future work in the area of electronic commerce included an international convention based on relevant provisions of the UNCITRAL Model Law on Electronic Commerce and of the draft uniform rules[176] and an omnibus protocol to amend multilateral treaty regimes to facilitate the increased use of electronic commerce.

Regarding the topic "Assignment in receivables financing", the Commission had before it the reports of the twenty-ninth and thirtieth sessions of the Working Group,[177] and it was noted that the draft convention had been adopted with the ex-

ception of the optional substantive law priority rules. The Commission also noted that there were a number of specific questions that remained to be addressed by the Working Group in regard to the convention.

In connection with the topic "Monitoring the implementation of the 1958 New York Convention",[178] the Commission had received 59 replies to the questionnaire (out of a currently total 121 States parties) which, after all responses had been received and analysed, would form the basis for a report on the legislative implementation of the Convention.

Regarding the possible future work in the area of international commercial arbitration, the Commission had requested the Secretariat to prepare a note that would serve as a basis for the considerations of the Commission, and at the current session the Commission[179] discussed the note, which highlighted the issues and problems in arbitral practice.

The Commission also had before it a proposal by Australia on possible future work in the area of insolvency law,[180] and the Commission decided that the Working Group on Insolvency Law should explore the possibility of the Commission taking up such a topic.

Regarding the case law on UNCITRAL texts (CLOUT),[181] the Commission noted the wide disparity in the level of participation by national correspondents, who collected relevant decisions and arbitral awards and prepared case abstracts for compilation and distribution by the UNCITRAL secretariat, and that improvements in the extent of reporting and in the quality of the abstracts prepared would significantly improve the reliability of the CLOUT system and would reduce the need for major revisions by the secretariat. It also was noted that, whereas 58 jurisdictions had appointed national correspondents, there were another 30 jurisdictions that had not yet done so.

(*b*) Consideration by the General Assembly

At its fifty-fourth session, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 54/103 of 9 December 1999, in which it took note of the report of the Commission on the work of its thirty-second session,[182] invited States to nominate persons to work with the private foundation established to encourage assistance to the Commission from the private sector, and reaffirmed the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in that field.

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8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY AD HOC LEGAL BODIES

In addition to the resolutions regarding the International Law Commission and 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-fourth session. The Assembly subsequently adopted the resolutions mentioned in subsections (*a*) to (*j*) below. Furthermore, in its decision 54/429 of 9 December 1999, the General Assembly, recalling

its decision 53/430 of 8 December 1998, desiring to review the provisions of the statute of the United Nations Administrative Tribunal, taking note of the draft resolution submitted by the delegations of France, Ireland and the United Kingdom,[183] and mindful of the comments made by States on the draft resolution at its fifty-fourth session, decided to include in the provisional agenda of its fifty-fifth session the item entitled "Review of the statute of the United Nations Administrative Tribunal".

(*a*) Outcome of the action dedicated to the 1999 centennial of the first International Peace Conference

The General Assembly, in its resolution 54/27 of 17 November 1999, took note of the outcome, reported by the co-hosts, the Governments of the Netherlands and the Russian Federation.[184]

(*b*) United Nations Decade of International Law

In its resolution 54/28 of 17 November 1999, the General Assembly, having considered the report of the Secretary-General,[185] expressed its appreciation for the work done by the Working Group on the United Nations Decade of International Law. The Assembly also welcomed the achievements during the Decade in the codification and progressive development of international law, and called upon States, in order to contribute further to the rule of international law, to consider, if they had not yet done so, becoming parties to the multilateral treaties adopted during the Decade, including those listed in the annex to the report of the Secretary-General.

(*c*) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

By its resolution 54/102 of 9 December 1999, the General Assembly approved the guidelines and recommendations contained in section III of the report of the Secretary-General[186] and adopted by the Advisory Committee on the United Nations Programme of Assistance, in particular those designed to achieve the best possible results in the administration of the Programme within a policy of maximum financial restraint, and authorized the Secretary-General to carry out in 2000 and 2001 the activities specified in his report.

(*d*) Report of the Committee on Relations with the Host Country

By its resolution 54/104 of 9 December 1999, the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 43 of its report.[187]

(*e*) Establishment of the International Criminal Court

The General Assembly, in its resolution 54/105 of 9 December 1999, reiterated the historic significance of the adoption of the Rome Statute of the International Criminal Court,[188] and called upon all States to consider signing and ratifying the Rome Statute and encouraged efforts aimed at promoting awareness of the results of the 1998 Rome Conference and of the provisions of the Statute. The Assembly also requested the Secretary-General to convene the Preparatory Commission for the

International Criminal Court, in accordance with resolution F adopted by the Rome Conference,[189] from 13 to 31 March, 12 to 30 June and 27 November to 8 December 2000, to carry out the mandate in that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

(*f*) 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, in its resolution 54/106 of 9 December 1999, took note of the report of the Special Committee on the Charter,[190] and decided that the Special Committee should hold its next session from 10 to 20 April 2000.

(*g*) 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 54/107 of 9 December 1999, the General Assembly, taking note of the most recent report of the Secretary-General, submitted in accordance with General Assembly resolution 53/107 of 8 December 1998,[191] renewed its invitation to the Security Council to consider the establishment of further mechanisms or procedures, as appropriate, for consultations as early as possible under Article 50 of the Charter of the United Nations with third States which were or might be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council under Chapter VII of the Charter, with regard to a solution of those problems, including appropriate ways and means for increasing the effectiveness of its methods and procedures applied in the consideration of requests by the affected States for assistance; welcomed once again the further measures taken by the Security Council since the adoption of General Assembly resolution 50/51 of 11 December 1995, most recently the note by the President of the Security Council of 29 January 1999[192] aimed at improving the work of the sanctions committees, including increasing the effectiveness and transparency of the sanctions committees, invited the Council to implement those measures, and strongly recommended that the Council continue its efforts to further enhance the functioning of the sanctions 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; and requested the Secretary-General to pursue the implementation of General Assembly resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 15 December 1997 and 53/107 of 8 December 1998 and to ensure that the competent units within the Secretariat developed the adequate capacity and appropriate modalities, technical procedures and guidelines to continue, on a regular basis, to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions, to continue developing a possible methodology for assessing the adverse consequences actually incurred by third States and to explore innovative and practical measures of assistance to the affected third States. The Assembly also welcomed the report of the Secretary-General containing a summary of the deliberations and main findings of the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to the affected

third States,[193] and invited States and relevant international organizations within and outside the United Nations system which had not yet done so to provide their views regarding the report of the ad hoc expert group meeting; and also requested the Secretary-General to present to the General Assembly his views on the deliberations and main findings, including the recommendations, of the ad hoc expert group on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions, taking into account the views of States, the organizations of the United Nations system, international financial institutions and other international organizations, and to provide the relevant information, where appropriate, on other developments in that context, particularly on the work of the sanctions committees as referred to in the above-mentioned note by the President of the Security Council.

(*h*) Strengthening of the International Court of Justice

By its resolution 54/108 of 9 December 1999, bearing in mind the comments and observations submitted by the Court and by States on the consequences that the increase in the volume of cases before the Court had on its operation,[194] expressed its appreciation to the International Court of Justice for the measures adopted to operate an increased workload with maximum efficiency.

(*i*) International Convention for the Suppression of the Financing of Terrorism

The General Assembly, by its resolution 54/109 of 9 December 1999, adopted the International Convention for the Suppression of the Financing of Terrorism, as contained in the annex to the resolution, and requested the Secretary-General to open it for signature at United Nations Headquarters in New York from 10 January 2000 to 31 December 2001.[195]

(*j*) Measures to eliminate international terrorism

By its resolution 54/110 of 9 December 1999, the General Assembly, having examined the report of the Secretary-General,[196] strongly condemned all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed. The Assembly also urged all States that had not yet done so to consider, as a matter of priority, becoming parties to relevant conventions and protocols as referred to in paragraph 6 of resolution 51/210 of 17 December 1996, that is, the Convention on Offences and Certain Other Acts Committed on Board Aircraft,[197] signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft,[198] signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,[199] concluded at Montreal on 23 September 1971, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents,[200] adopted in New York on 14 December 1973, the International Convention against the Taking of Hostages,[201] adopted in New York on 17 December 1979, the Convention on the Physical Protection of Nuclear Material,[202] signed at Vienna on 3 March 1980, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation,[203] supplementary to the Convention for the Suppression of Unlawful Acts against the

Safety of Civil Aviation, signed at Montreal on 24 February 1988, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,[204] done at Rome on 10 March 1988, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf,[205] done at Rome on 10 March 1988, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection,[206] done at Montreal on 1 March 1991, as well as the International Convention for the Suppression of Terrorist Bombings.[207] The Assembly furthermore called upon all States to enact, as appropriate, domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enabled them to bring to trial the perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional organizations to that end.

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9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[208]

During the reporting period, UNITAR continued to conduct its training in Multilateral Diplomacy and International Affairs Management, designed for junior, mid-level and senior-level diplomats, diplomatic trainees, government officials from specialized ministries, academics and representatives from intergovernmental organizations. Under the programme, training was provided in the specific areas of diplomacy, peacemaking and preventive diplomacy, environmental law, international migration and peacekeeping operations. The Institute also provided training in the field of economic and social development, including the legal aspects of debt and financial management for sub-Saharan Africa and Viet Nam. Training courses offered in 1999 included Workshop on the structure, drafting and adoption of United Nations resolutions; WIPO/UNITAR Academy on Intellectual Property: Challenges and Opportunities in the 21st Century; Workshop on conference diplomacy and multilateral negotiation; and training workshops on environmental legislation.

Consideration by the General Assembly

At its fifty-fourth session, the General Assembly, on the recommendation of the Second Committee, adopted resolution 54/229 of 22 December 1999, in which it reaffirmed the importance of a coordinated United Nations system-wide approach to research and training and underlined the need for United Nations training and research institutions to avoid duplication in their work, and encouraged the Board of Trustees of the Institute to continue its efforts to address the discrepancy between the decline in contributions to the General Fund of the Institute and the increase in participation in its programmes.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANIZATION

(*a*) International Labour Conference—Eighty-seventh session

1. The International Labour Conference (ILC), which held its 87th session at Geneva from 1 to 17 June 1999, adopted a Convention and Recommendation concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.[209]

2. The International Labour Conference also decided to amend article 7, paragraph 1, (*b*), of its Standing Orders[210] so as to make it clear that the annual reports under the follow-up to the Declaration on Fundamental Principles and Rights at Work, adopted in June 1998, would not be covered by its terms. Article 7, paragraph 1, (*b*), now reads as follows:

> "1. The Conference shall, as soon as possible, appoint a Committee to consider:
>
> . . .
>
> (*b*) The information and reports concerning Conventions and Recommendations communicated by members in accordance with article 19 of the Constitution, except for information requested under paragraph 5 (*e*) of that article where the Governing Body has decided upon a different procedure for its consideration;".

3. At the same session, the International Labour Conference adopted a resolution entitled "Resolution on the widespread use of forced labour in Myanmar", which reads as follows:[211]

> "*The International Labour Conference*,
>
> "*Reaffirming* that all member States have an obligation to apply fully, in law and in practice, the Conventions that they have voluntarily ratified,
>
> "*Recalling* that Myanmar ratified the Forced Labour Convention, 1930 (No. 29), and the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), on 4 March 1955,
>
> "*Taking note* of the provisions of United Nations General Assembly resolution 53/162 of 9 December 1998 and of United Nations Commission on Human Rights resolution 1999/17 of 23 April 1999, which also address the use of forced labour in Myanmar,
>
> "*Recalling* the decision of the Governing Body to place on the agenda of its November 1999 session an item entitled 'Measures, including recommendations under article 33 of the ILO Constitution, to secure compliance by the Government of Myanmar with the recommendations of the Commission of Inquiry',
>
> "*Gravely concerned* by the Government's flagrant and persistent failure to comply with the Convention, as concluded by the Commission of Inquiry established to examine the observance of the Forced Labour Convention, 1930 (No. 29),
>
> "*Appalled* by the continued widespread use of forced labour, including for work on infrastructure projects and as porters for the army,

"*Noting* the report (dated 21 May 1999) of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry in its report on 'forced labour in Myanmar (Burma)',

"1. *Deeply deplores* that:

(*a*) The Government has failed to take the necessary steps to bring the relevant legislative texts, in particular the Village Act and Towns Act, into line with the Forced Labour Convention, 1930 (No. 29), by 1 May 1999, as recommended by the Commission of Inquiry;

(*b*) At the end of the twentieth century, the State Peace and Development Council has continued to inflict the practice of forced labour—nothing but a contemporary form of slavery—on the people of Myanmar, despite repeated calls from the International Labour Organization and from the wider international community for the past 30 years;

(*c*) There is no credible evidence that those exacting forced labour in Myanmar have been punished under section 374 of the Penal Code;

"2. *Reaffirms* that this issue should be further considered by the Governing Body in November 1999;

"3. *Resolves*:

(*a*) That the attitude and behaviour of the Government of Myanmar are grossly incompatible with the conditions and principles governing membership of the Organization;

(*b*) That the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the International Labour Organization, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations;

(*c*) That the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by the International Labour Organization, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry."

4. The International Labour Conference adopted a resolution amending the Financial Regulations.[212]

5. The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 25 November to 10 December 1999 to adopt its report[213] to the International Labour Conference at its 88th session (2000).

6. Representations lodged under article 24 of the Constitution of the International Labour Organization alleging non-observance by New Zealand of the Forced Labour Convention, 1930 (No. 29)[214]; by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)[215]; and by the Republic of Moldova of the Protection of Wages Convention, 1949 (No. 95),[216] were examined by the Governing Body.

7. The Governing Body, which met at Geneva, considered and adopted the following reports of its Committee on Fredom of Association: the 313th , 314th and 315th reports[217] (274th session, March 1999), the 316th and 317th reports[218] (275th session, June 1999); and the 318th and 319th reports[219] (276th session, November 1999).

8. The Working Party on the Social Dimensions of the Liberalization of International Trade, established by the Governing Body, held two meetings in 1999 during the 274th (March 1999)[220] and 276th (November 1999)[221] 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 1999 during the 274th (March 1999)[222] and 276th (November 1999)[223] sessions of the Governing Body of ILO.

(*b*) Agreements signed by ILO

10. In 1999, the Director-General of the International Labour Organization signed two agreements: one with the Inter-Parliamentary Union[224] and the other with the Pan-American Health Organization.[225]

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2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Agreements relating to conferences, seminars and other meetings:

For the purpose of holding an international conference on the territory of a State which is a party to the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations as well as annex IV thereto, UNESCO concluded agreements which contained the following provisions concerning the legal status of the organization:

"*Privileges and immunities*

"The Government of [*name of the respective State is inserted*] shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations as well as annex IV thereto, to which [*name of the State is inserted*] has been a party from [*date of deposit of the instrument is inserted, if applicable*].

"In particular, the Government shall not place any restriction on the entry into, sojourn in and departure from the territory of [*name of the State is inserted*] of all persons, of whatever nationality, entitled to attend the meeting by virtue of a decision of the appropriate authorities of UNESCO and in accordance with the Organization's relevant rules and regulations.

"*Damage and accidents*

"As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of [*name of the State is inserted*] shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents that may occur to persons present therein. The [*name of the State is inserted*] authorities shall be entitled to adopt appropriate measures to ensure the protection of the participants, particularly against fire and other risks, of the above-mentioned premises, facilities and furniture. The Government of [*name of the State is inserted*] may also claim

from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization."

(*b*) Constitutional and procedural questions

During its 30th session, from 26 October to 17 November 1999, the General Conference adopted the following resolution:

Resolution 77: Draft amendment to article VI, paragraph 2, of the Constitution

At its 18th plenary meeting, on 10 November 1999, the General Conference *took note* of the sixth report of the Legal Committee (document 30 C/ 50 and Addendum) which concerned a draft amendment to article VI, paragraph 2, of the Constitution. This draft, submitted by New Zealand, was aimed at imposing an eight-year term limit on the office of the Director-General. According to the existing legal provisions, the current six-year term can be renewed once for the same period, making a total of 12 years. In the opinion of the sponsor of this draft resolution, this is too long a period for a major organization like UNESCO. It was accordingly proposed that the duration of the second term be reduced to two years. Canada had submitted a proposed change to the above-mentioned draft amendment with a view to limiting each term of office to a period of four years. The General Conference *decided* to refer the draft amendment to article VI, paragraph 2, of the Constitution to the Executive Board for consideration, with a view to resubmission at its next session. The draft amendment proposes that the present paragraph 2 of article VI be replaced with the following (the changes are in italics): "The Director-General shall be nominated by the Executive Board and appointed by the General Conference for a period of *six* years, under such conditions as the Conference may approve. The Director-General may be appointed for a further term of *two* years but shall not be eligible for reappointment to a subsequent term. The Director-General shall be the Chief Administrative Officer of the Organization."

(*c*) International regulations

(i) *Entry into force of instruments previously adopted*

The Convention on the Recognition of Qualifications concerning Higher Education in the European Region, adopted in Lisbon on 11 April 1997, entered into force on 1 February 1999.

(ii) *Adopted instrument*

The Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict was adopted at The Hague on 26 March 1999.[226]

In accordance with the terms of its article 43, the Second Protocol will enter into force three months after 20 instruments of ratification, acceptance, approval or accession have been deposited. Thereafter, it shall enter into force, for each party, three months after the deposit of its instrument of ratification, acceptance, approval or accession.

The Second Protocol is a considerable advance in the level of protection in the Convention in the following respects: it provides a clear definition of the notion of

"military necessity", thus preventing possible abuse or ambiguous interpretation; it creates a new category of enhanced protection for cultural heritage of the greatest importance for humanity which is protected by relevant national legislation and is not used for military purposes; it elaborates sanctions for serious violations against cultural property and defines conditions when individual criminal responsibility applies. Finally, a most important advance is the establishment of a 12-member Intergovernmental Committee, which will have powers in the implementation of the Convention and the Second Protocol, in respect of those States which will be party to both instruments. The Convention itself made no provision for such a body. It should be noted that the Second Protocol is supplementary to, and in no way replaces, the Convention.

By 31 December 1999, the Second Protocol had been signed by 39 States. However, no instrument of ratification, acceptance, approval or accession had been deposited by that date.

(iii) *Proposals concerning the preparation of new instruments*

a. The General Conference having invited the Director-General to prepare a draft Recommendation on the Provision of Universal Access to Multicultural Human Heritage and Multilingualism in Cyberspace (29 C/Resolution 36), such an instrument will be submitted to the General Conference at its 31st session.

The essence of it is to foster an equitable, just and multicultural information society respecting the principles embodied in the Universal Declaration of Human Rights and promoting economic growth, public welfare and social cohesion. Above all, it is a call to all stakeholders, in both the public and private sectors, to maximize information and communication technologies capacities so that everyone should be able to enjoy the benefits of universal and affordable access to information and knowledge.

The Recommendation is based on the results and findings of five studies carried out by experts in each of the following fields of comparable importance in the provision of universal access to information and knowledge in the new environment of electronic information exchanges and networking commonly referred to as cyberspace; universal access to telematics networks and services, expansion of public domain information, access to and production of contents including intellectual property rights and exception to copyright issues, protecting human dignity in the digital age, including privacy and freedom of expression, and promoting multilingualism and cultural diversity on the information networks.

In pursuing these objectives, an increasing number of Governments feel the need to adapt to the new social, cultural and economic dimensions of this future society, and to formulate policy priorities, especially those related to a number of ethical, legal and societal issues that arise in cyberspace. Many international (Organisation for Economic Cooperation and Development, International Chamber of Commerce etc.) and regional (Council of Europe, European Union, APEC etc.) organizations have launched initiatives intended to facilitate a trans-border dialogue with a view to reaching consensus on the principles that should guide the economic policies (e.g., electronic commerce regulations). It should be noted, however, that until recently little concern was shown for principles to be applied for furthering education, science and cultural diversity in cyberspace.

The Administrative Committee on Coordination Statement on Universal Access to Basic Communication and Information Services, issued in 1997,[227] commits the

United Nations system to promoting policies that provide equitable public participation in the information society. The United Nations Economic and Social Council Ministerial Declaration on the role of information technology in the context of a knowledge-based global economy[228] is also highlighting the need for international dialogue, for bringing together the best practices and mobilizing available resources to improve the effective use of those technologies by the developing countries.

These commitments are of crucial importance for the fulfilment of the objectives enunciated in the UNESCO Constitution "to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives".[229] UNESCO has already undertaken many activities for the implementation of its function "in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote free flow of ideas by word and image".[230]

The Recommendation presents for the member States a tentative proposal for the establishment of a cooperative international action in the formulation of principles relating to universal and affordable access to information in cyberspace in its fields of competence.

b. The General Conference having invited the Director-General to prepare a draft Convention concerning the Protection of the Underwater Cultural Heritage (29 C/Resolution 21), work on the elaboration of such an instrument is proceeding. To that end the Secretariat convened in April 1999 a second meeting of governmental experts. The meeting decided to incorporate in an annex to the draft Convention the principles set forth in the 1996 International Council on Monuments and Sites (ICOMOS) Charter on the protection and management of underwater cultural heritage.

At its thirtieth session (Paris, October-November 1999), the General Conference of UNESCO considered the progress report prepared by the Secretariat and adopted resolution 30 C/26, in which it invited the Director-General "to take all appropriate measures for the continuation of the work of the governmental experts under the programme for the next biennium" and "to call for another meeting of governmental experts at UNESCO headquarters in Paris at the earliest possible juncture with the aim of concluding this work as soon as possible".

(*d*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within the field of competence of UNESCO

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 18 to 20 May and on 29 and 30 September 1999 in order to examine communications which had been transmitted to it in accordance with Executive Board decision 104 EX/3.3.

At its May 1999 session, the Committee examined 27 communications of which 6 were examined with a view to determining their admissibility or otherwise, 11 were examined as to their substance, and 10 were examined for the first time. Five communications were declared inadmissible and five were struck from the list because they were considered as having been settled or did not, after examination of their merits, appear to warrant further action. Examination of the remaining 17

was deferred. The Committee presented its report to the Executive Board at its 156th session.

At its September 1999 session, the Committee examined 17 communications, of which 7 were examined with a view to determining their admissibility or otherwise and 10 were examined as to their substance. No new communication was submitted to the Committee. One communication was declared inadmissible and seven were struck from the list because they were considered as having been settled or did not, after examination of their merits, appear to warrant further action. Examination of the nine remaining was deferred. The Committee presented its report to the executive Board at its 157th session.

(*e*) Copyright activities

(i) The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) met for its seventeenth ordinary session held from 5 to 7 July at the headquarters of the World Intellectual Property Organization (WIPO) in Geneva.

The most important issue discussed by the Committee was the study by Professor M. Walter (Austria) (commissioned by the Secretariat at the Committee's request) on the relationship of, and the comparison between, the Rome Convention, the WIPO Performances and Phonograms Treaty and the TRIPS Agreement (WTO), as well as on the evolution and the possible improvement of the protection granted under the Rome Convention.[231]

Having discussed the above issue, the Committee decided to invite its member States as well as observer States and the intergovernmental organizations concerned to submit their views and comments on the factual part of the aforementioned study to the Secretariat, which would include them in a document to be discussed by the Committee at its next session (June 2001).

(ii) In the search for legal means for the international protection of the expressions of folklore (traditional and popular cultures), UNESCO, jointly with WIPO, organized five regional consultation meetings, in Noumea, Pretoria, Quito, Hanoi and Tunis. The studies discussed by the participants and the exchange of views made it possible to determine future actions to be carried out by both organizations in search of solutions.

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3. WORLD HEALTH ORGANIZATION

(*a*) Constitutional and legal developments

In 1999, no new member States joined the World Health Organization. Thus, at the end of 1999, there were 191 States members and two associate members of WHO.

The amendments to articles 24 and 25 of the Constitution, adopted in 1998 by the fifty-first World Health Assembly to increase the membership of the Executive Board from 32 to 34, had been accepted by 58 member States as at 31 December 1999. The amendment to article 7 of the Constitution, adopted in 1965 by the eight-

eenth World Health Assembly to allow the Assembly to suspend certain rights of member States practising racial discrimination, had been accepted by 67 member States as at 31 December 1999. The amendment to article 74 of the Constitution, adopted in 1978 by the thirty-first World Health Assembly to establish Arabic as one of the authentic languages of the Constitution, had been accepted by 52 member States as at 31 December 1999. Acceptance by two thirds of the member States is required for the amendments to enter into force.

On 12 March 1999, the United Nations International Drug Control Programme became the seventh co-sponsoring organization of the Joint United Nations Programme on HIV/AIDS (UNAIDS).

The third Ministerial Conference on Environment and Health, on 17 June 1999, adopted a Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.[232] The Conference had been convened by the Regional Office for Europe of the World Health Organization and was held in London from 16 to 18 June 1999. The Protocol had been signed by 35 States and had been accepted by one State on 31 December 1999. In accordance with its article 23, the Protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.

The fifty-second World Health Assembly, by its resolution WHA52.6, adopted on 24 May 1999, approved a cooperation agreement between the World Health Organization and the Universal Postal Union to promote the safe transport of infectious substances and diagnostic specimens.[233]

An agreement based on the standard Basic Agreement for the Establishment of Technical Advisory Cooperation was concluded in 1999 with the Government of Belarus.[234]

(*b*) Health legislation

The fifty-second World Health Assembly, by its resolution WHA52.18, set in motion a process to begin multilateral negotiations on a WHO Framework Convention on Tobacco Control and possible related protocols. To that effect, it established an intergovernmental negotiating body open to all member States to draft and negotiate the proposed convention and possible related protocols. It also established a working group open to all member States to prepare the work of the intergovernmental negotiating body and, for that purpose, to prepare proposed draft elements of the Framework Convention. The Working Group was asked to complete its work and submit a report to the fifty-third World Health Assembly in 2000. The 1st meeting of the Working Group was held from 25 to 29 October 1999 and was attended by representatives of 114 member States. On the basis of a Secretariat document that examined types of provisions found in existing conventions,[235] the first session of the Working Group focused on a mainly technical discussion of the proposed draft elements, including element I (Preamble, objectives, principles), element II (Obligations) and element III (Institutions), and a general discussion of possible related protocols. The Working Group submitted a report on progress achieved in developing the proposed draft elements to the WHO Executive Board at its 105th session and scheduled a second and final meeting for March 2000.

The fifty-third World Health Assembly also adopted resolution WHA52.19, setting out a "revised drug strategy". Among the measures that the Assembly urged

member States to adopt, the following should be underlined in view of their legal implications: (*a*) to explore and review their options under relevant international agreements, including trade agreements, to safeguard access to essential drugs; (*b*) to establish and enforce regulations that ensure good uniform standards of quality assurance for all pharmaceutical materials and products manufactured in, imported to, exported from or in transit through their countries; (*c*) to enact and enforce legislation or regulations in accordance with the principles of the WHO Ethical Criteria for Medicinal Drug Promotion; and (*d*) to develop or maintain national guidelines governing drug donations that are compatible with the inter-agency guidelines issued by WHO and to work with all interested parties to promote adherence to such guidelines.

By December 1999, 160 member States had reported to WHO on action taken to give effect to the principles and aims of the International Code of Marketing of Breast-milk Substitutes. National actions included adopting or strengthening legislation, guidelines for health workers or distributors, agreements with manufacturers, and monitoring and reporting mechanisms. In 1999, Benin, Cambodia, Croatia, France, Georgia, Guinea, Malaysia and Panama provided information on a range of new actions; WHO responded to requests for technical support from a number of countries, including Australia, New Zealand and Pakistan, and organized training workshops in Thailand and in the African region (for 12 French-speaking countries).

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4. WORLD BANK

(*a*) IBRD, IFC and IDA membership

In 1999, Barbados became a member of the International Development Association (IDA). As at 31 December 1999, the membership of the International Board for Reconstruction and Development (IBRD), the International Finance Corporation (IFC) and IDA stood at 181, 174 and 161 respectively.

(*b*) Prototype Carbon Fund

The Executive Directors of IBRD approved the Prototype Carbon Fund in July 1999 and its first closing was in April 2000, when it began operations. Participation in the Fund required public sector entities to subscribe $US 10 million and private sector entities $5 million. At the first closing, the Fund stood at $135 million, including six Governments and 16 companies. A second closing was planned for late 2000, after which the Fund would be closed for subscription. The objectives of the Fund are threefold: first, to demonstrate how projects designed to reduce emissions of greenhouse gases can promote and contribute to the sustainable development of the Bank's borrowing member countries and the ways in which those projects can channel additional public and private capital for development as well as providing both financiers and project host countries with an equitable share of the resulting benefits;[236] second, to provide the parties to the United Nations Framework Convention on Climate Change an opportunity to "learn by doing" as they themselves deliberate on the rules, regulations and procedures which will govern such greenhouse gas emission reduction projects under the framework of the Convention and

the Kyoto Protocol; and third, to provide an important example of how the Bank can work in partnership with both the public and the private sectors to mobilize new resources for its borrowing member countries while addressing global environmental concerns.

(*c*) World Bank Inspection Panel

In April 1999, the Executive Directors of the Bank and of IDA concluded their second review of the experience of the Inspection Panel.[237] During the second review, which was started in November 1997, the Executive Directors engaged in extensive consultations with the Bank's management, the members of the Inspection Panel and representatives of a large number of NGOs.[238] In its conclusions, the Board confirmed the soundness of the resolution establishing the Inspection Panel and provided guidelines for its application.[239]

(*d*) Multilateral Investment Guarantee Agency (MIGA)

Signatories and members

The Convention Establishing the Multilateral Investment Guarantee Agency[240] was opened for signature to member countries of the World Bank and Switzerland in October 1985. As at December 1999, the Convention had been signed by 166 countries, of which 151 were full members. During 1999, requirements for membership were completed by Australia, Cambodia, Saint Kitts and Nevis and Mongolia.

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, transfer restriction, breach of contract, and war and civil disturbance. MIGA has issued a cumulative number of 446 contracts of guarantee for a total coverage of $6.3 billion, facilitating an estimated $31.74 billion in foreign direct investment.

MIGA-insured projects are located in 69 developing countries. The Agency has insured investors from Argentina, Austria, the Bahamas, Belgium, Brazil, Canada, Cayman Islands, Egypt, Finland, France, Germany, Greece, India, Italy, Japan, Luxembourg, Malaysia, Mauritius, the Netherlands, Norway, Panama, Portugal, the Republic of Korea, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland and Territories, the United States of America, Uruguay and the Virgin Islands.

Expansion of insurance coverage

MIGA has expanded the availability of its insurance coverage as follows:

—Change in coverage limits

Per-project and country limits were increased, allowing a substantial expansion in the amount of guarantee coverage MIGA may issue.

—Treaty reinsurance

The allowable limits of political risk insurance that MIGA may issue were raised from $50 million to $110 million per project, and from $250 million to $350 million per host country. Treaty reinsurance agreements signed with other

insurers further increased the capacity of MIGA to issue additional amounts of insurance coverage per project for up to $200 million and per host country of up to $620 million.

A treaty reinsurance agreement was signed with XL Insurance Limited of Bermuda. A similar agreement was signed by MIGA in 1997 with ACE Insurance Company Ltd.

—*Facultative reinsurance and co-insurance agreements*

Co-insurance and reinsurance agreements were concluded with Lloyd's of London syndicates, the Great Northern Insurance Company, a member of Chubb & Son of the United States, Steadfast Insurance Company (Zurich US) (United States) and Sovereign Risk Insurance Ltd. (Bermuda), among others.

Memoranda of Understanding on Cooperation were signed with the Export, Import and Investment Insurance Division of the Ministry of International Trade and Industry of Japan, the Export Finance and Insurance Corporation of Australia and the Società Italiana per le Imprese All'Estero S.P.A. (SIMEST) of Italy.

First MIGA/IFC Compliance Adviser/Ombudsman

MIGA and the International Finance Corporation (IFC) created the position of Compliance Adviser and Ombudsman to address the concerns of local communities that may be affected by projects supported by MIGA or IFC.

Claims experience and dispute resolution

The first claim since the establishment of MIGA was filed in March 1999 when an insured power project was postponed in Indonesia. MIGA pursued discussions with the investor and the host Government to find a mutually acceptable solution.

In addition to those investment disputes in which it is involved as insurer, MIGA, in accordance with its Convention, uses its good offices to encourage the settlement of other disputes between investors and member countries. MIGA staff experienced in resolving conflicts relating to foreign investment provided legal assistance and guidance during the year to parties from numerous countries that sought creative approaches to the resolution of their investment-related disputes. The objective of MIGA in these cases is to resolve disputes before they require formal arbitration.

Trust funds

Specialized Investment Guarantee Trust Funds were devised to provide guarantees against major political risks for projects in ineligible territories and countries with the greatest developmental needs. Coincidentally, they offer a venue for a unique type of cooperation among multilateral institutions. Guaranteed projects follow the broad parameters of the MIGA guarantee programme and carry the same development mandate as the Agency.

MIGA administers two Investment Guarantee Trust Funds:

—The West Bank and Gaza Investment Guarantee Trust Fund, with contributions from the Palestinian Authority ($10 million), the European Investment Bank (5 million euros) and the Government of Japan ($5.9 million). MIGA issued its first contract of guarantee for an investment in the West Bank for the account of the Trust Fund in June 1999.

—The Investment Guarantee Trust Fund for Bosnia and Herzegovina, sponsored by the European Union, with a credit line of ECU 10.5 million.

Host country 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 1999, the Agency concluded legal protection agreements with Barbados, Eritrea, Latvia, Malaysia and Mozambique. As of December 1999, 92 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 1999, the Agency concluded agreements on use of local currency with Barbados, the Dominican Republic, Eritrea, Malaysia and Mozambique. As of December 1999, 97 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 1999, the Agency concluded such arrangements with Cambodia, the Central African Republic, El Salvador, Haiti, Lesotho, Mozambique and the former Yugoslav Republic of Macedonia. As of December 1999, 102 such agreements were in force.

(*e*) International Centre for Settlement of Investment Disputes

Signatures and ratifications

There were no new signatures and ratifications during 1999 to the 1965 ICSID Convention.[241] At the end of the year, the number of signatory States was 146 and the number of Contracting States 131.

Disputes before the Centre

During 1999, arbitration proceedings under the 1965 ICSID Convention were instituted in eight new cases. They were: *Mobil Argentina S.A. v. Argentine Republic* (case No. ARB/99/1), *Alex Genin and others v. Republic of Estonia* (case No. ARB/99/2), *Philippe Gruslin v. Malaysia* (case No. ARB/99/3), *Empresa Nacional de Electricidad S.A. v. Argentine Republic* (case No. ARB/99/4), *Alimenta S.A. v. Republic of The Gambia* (case No. ARB/99/5), *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt* (case No. ARB/99/6), *Patrick Mitchell v. Democratic Republic of the Congo* (case No. ARB/99/7), *Astaldi S.p.A. & Columbus Latinoamericana de Construcciones S.A. v. Republic of Honduras* (case No. ARB/99/8).

Two arbitration proceedings were instituted under the ICSID Additional Facility Rules. They were: *Marvin Roy Feldman Karpa v. United Mexican States* (case

No. ARB(AF)/99/1), *Mondev International Ltd. v. United States of America* (case No. ARB(AF)/99/2).

One proceeding was discontinued, *American Manufacturing & Trading, Inc. v. Democratic Republic of the Congo* (case No. ARB /93/1)—*Revision Proceeding*, and three proceeedings, *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) and *Robert Azinian and others v. United Mexican States* (case No. ARB(AF)/97/2), were closed following the rendition of awards.

As at 31 December 1999, twenty other cases were pending before the Centre. They were: *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), *Metalclad Corporation v. United Mexican States* (case No. ARB(AF)/97/1), *Société d'Investigation de Recherche et d'Exploitation Minière (SIREXM) v. Burkina Faso* (case No. ARB/97/1), *Compañía de Aguas del Aconquija S.A. and Compagnie Générale des Eaux v. Argentine Republic* (case No. ARB/97/3), *Ceskoslovenská Obchodni Banka, a.s. v. Slovak Republic* (case No. ARB/97/4), *Lanco International, Inc. v. Argentine Republic* (case. No. ARB/97/6), *Emilio Augustín Maffezini v. Kingdom of Spain* (case No. ARB/97/7), *Compagnie Française pour le Développement des Fibres Textile (CFDT) v. Republic of Côte d'Ivoire* (case No. ARB/97/8), *Joseph C. Lemire v. Ukraine* (case No. ARB(AF)/98/1), *Houston Industries Energy, Inc. and others v. Argentine Republic* (case No. ARB/98/1), *Victor Pey Casado and another v. Republic of Chile* (case No. ARB/98/2), *International Trust Company of Liberia v. Republic of Liberia* (case No. ARB/98/3), *Wena Hotels Limited v. Arab Republic of Egypt* (case No. ARB/98/4), *Eduardo A. Olguín v. Republic of Paraguay* (case No. ARB/98/5), *Compagnie Minière Internationale Or S.A. v. Republic of Peru* (case No. ARB/98/6), *Banro American Resources, Inc. and Société Aurifère du Kivu et du Maniema S.A.R.L. v. Democratic Republic of the Congo* (case No. ARB/98/7), *Waste Management, Inc. v. United Mexican States* (case No. ARB(AF)/98/2), *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America* (case No. ARB(AF)/98/3), *Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited* (case No. ARB/98/8).

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5. INTERNATIONAL MONETARY FUND

(*a*) Membership issues

(i) *Accession to membership*

No countries joined the International Monetary Fund in 1999. Accordingly, membership in the Fund as at 31 December 1999 remained at 182 countries.

(ii) *Status and obligations under article VIII or article XIV of the IMF Articles of Agreement*

Under article VIII, sections 2, 3 and 4, of the IMF Articles of Agreement, members of the Fund may not, without the Fund's approval: (*a*) impose restrictions on the making of payments and transfers for current international transactions; or

(*b*) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding these provisions, pursuant to article XIV, section 2, of the Articles of Agreement, a member may notify IMF that it intends to avail itself of the transitional arrangements thereunder and, therefore, may maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV does not, however, permit a member, after it joins the Fund, to introduce new restrictions on the making of payments and transfers for current international transactions without the approval of the Fund.

Members that avail themselves of the transitional arrangements of article XIV, section 2, consult with IMF annually on the restrictions maintained thereunder. IMF generally encourages such members to remove these restrictions and to formally accept the obligations of article VIII, sections 2, 3 and 4. Where necessary and if requested by a member, IMF also provides technical assistance to help the member remove these restrictions.

In 1999, Brazil and Mauritania formally accepted the obligations of article VIII, sections 2, 3 and 4, raising the total number of countries that have accepted these obligations (as at 31 December 1999) to 149.

(iii) *Overdue financial obligations to the Fund*

As at 31 December 1999, there were seven countries (six members—Islamic Republic of Afghanistan, Democratic Republic of the Congo, Iraq, Liberia, Somalia and the Sudan—plus the Federal Republic of Yugoslavia (Serbia and Montenegro)) 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 IMF 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 countries with protracted arrears, declarations of ineligibility pursuant to article XXVI, section 2 (*a*), remained in effect in 1999 with respect to the Democratic Republic of the Congo, Liberia, Somalia and the Sudan.

(iv) *Suspension of voting rights and compulsory withdrawal*

a. *Democratic Republic of the Congo*

The voting and related rights of the Democratic Republic of the Congo were suspended effective 2 June 1994 pursuant to article XXVI, section 2 (*b*), of the IMF Articles of Agreement; the suspension remained in place throughout 1999.

b. *Sudan*

The voting and related rights of the Sudan were suspended effective 9 August 1993 pursuant to article XXVI, section 2 (*b*), of the IMF 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 IMF. On 24 February 1999, based on the Sudan's payment record and generally satisfactory implementation of a staff-monitored adjustment programme for 1998, IMF decided not to proceed to recommend the compulsory withdrawal of the Sudan to the Board of Governors at that time and decided to review the complaint by 23 February 2000.

(*b*) Issues pertaining to representation at the Fund

(i) *Afghanistan*

Afghanistan has overdue financial obligations to IMF, a matter which was last discussed by the IMF Executive Board on 13 March 1996. In view of the highly unsettled political situation in Afghanistan, there were no further Executive Board meetings in 1999 on this or any other matters relating to Afghanistan. In 1999, Afghanistan had no governor or alternate governor and was not represented at the annual meetings.

(ii) *Democratic Republic of the Congo*

As a consequence of the suspension of the voting and related rights of the Democratic Republic of the Congo (see above), the Governor and Alternate Governor for IMF appointed by the Democratic Republic of the Congo ceased to hold office pursuant to paragraph 3 (*a*) of schedule L of the IMF Articles of Agreement. Accordingly, the Democratic Republic of the Congo was not represented at the 1999 annual meetings.

(iii) *Somalia*

In October 1992, the Fund found that there was no effective Government for Somalia with which the Fund could carry on its activities, and the review of Somalia's overdue financial obligations to IMF was postponed to a date to be determined by the Managing Director, when in his judgment there was once again a basis for evaluating Somalia's economic and financial situation and the stance of its economic policies. No such review was conducted in 1999. Somalia had no governor or alternate governor in 1999 and was not represented at the 1999 annual meetings.

(iv) *Sudan*

The voting and related rights of the Sudan were suspended effective 9 August 1993, as discussed above. As with the Democratic Republic of the Congo the governor and alternate governor for IMF appointed by the Sudan ceased to hold office as a result of the suspension. Accordingly, the Sudan was not represented at the 1999 annual meetings. The Sudan was not within a constituency of an Executive Director in 1999.

(*c*) Increase in quotas of members—Eleventh General Review of Quotas

The IMF quota increase under the Eleventh General Review of Quotas approved by the IMF Board of Governors on 30 January 1998 became effective on 22 January 1999, raising overall quotas to SDR 212 billion (about $290 billion) from SDR 145.6 billion (about $204 billion).

(*d*) Contingent Credit Lines—establishment

In April 1999, the IMF Executive Board adopted a decision establishing the Contingent Credit Lines (CCL) for a period of two years. CCL is intended to be a new instrument of crisis prevention for members concerned about their potential vulnerability to contagion (i.e., circumstances largely beyond the member's control and stemming primarily from adverse developments in international capital markets consequent upon developments in other countries) but not facing a crisis at the time of commitment of

the Fund resources. More specifically, CCL is intended to provide short-term financing, if the need arises, to help members with fundamentally sound and well-managed economies overcome exceptional balance-of-payments financing needs arising from a sudden and disruptive loss of market confidence owing to contagion.

For a member to be eligible for CCL, it must satisfy the following four criteria: (*a*) the member is implementing policies considered unlikely to give rise to a need to use IMF resources; (*b*) the member's economic performance has been assessed positively by IMF in the last article IV consultation and thereafter, based on economic indicators reflecting domestic stability and extended sustainability and taking into account its progress in adhering to relevant internationally accepted standards; (*c*) the member should be maintaining constructive relations with private creditors with a view to facilitating appropriate private sector involvement and should have made satisfactory progress in limiting external vulnerability through management of the level and structure of its external debt and international reserves; and (*d*) the member should submit a satisfactory economic and financial programme, including a quantified framework, which the member stands ready to adjust as needed.

CCL is not subject to general IMF access limits, but commitments under CCL are expected to be in the range of 300 to 500 per cent of the member's quota in IMF, unless otherwise warranted by exceptional circumstances, and with due regard to the Fund's liquidity position. CCL commitments are to be made for up to one year. When a member requests actual use of CCL resources that have already been committed, a special activation review will be conducted expeditiously by the Board. At such reviews, the Executive Board needs to ascertain that the member, having successfully implemented its programme to date, is nevertheless severely affected by a crisis stemming from contagion and is committed to adjusting its policies as needed. In addition, the Executive Board needs to decide on the amount to be released immediately and on the phasing of the balance remaining and the associated conditionality. Countries drawing under CCL are expected to repay within one to one and one-half years of the date of each disbursement, and the Executive Board may extend this repayment period by up to one year. During the first year following the first drawing of CCL resources, the member will pay a surcharge of 300 basis points above the rate of charge on regular IMF drawings. The surcharge increases by 50 basis points every six months thereafter up to a maximum of 500 basis points. The Executive Board decided to review CCL after one year's experience.

(*e*) Assistance to post-conflict countries—enhancements

In April 1999, the IMF Executive Board discussed ways to enhance assistance to countries emerging from conflict by providing financial assistance on terms more appropriate to the circumstances of poor, post-conflict countries, and in larger amounts over a longer period when warranted. For those post-conflict countries in which it might take longer than expected to move to an IMF arrangement with upper credit tranche conditionality, the Directors agreed that access of up to an additional 25 per cent of quota in the form of outright purchases could be provided when there was sufficient evidence of the authorities' commitment to reform and capacity to implement appropriate policies. The Directors also agreed to permit early replacement of the Fund's non-concessional general resources provided under emergency post-conflict assistance with resources provided under the concessional Poverty Reduction and Growth Facility for low-income countries when the member was in a position to obtain Facility support for its economic programme.

(*f*) Transparency of IMF and member countries—additional initiatives

In March and April 1999, the IMF Executive Board approved a series of measures aimed at improving the transparency of the Fund's activities and members' policies and data. These measures included: (*a*) establishing a presumption that member countries would publish Letters of Intent, Memoranda of Economic and Financial Policies, and Policy Framework Papers underpinning IMF-supported programmes; (*b*) authorizing the publication of the Chairman's concluding remarks following Executive Board decisions on the use of IMF resources by a country; (*c*) establishing a pilot project ending on 4 October 2000 for member countries' voluntary publication of article IV consultation staff reports; (*d*) establishing a policy for the release of Public Information Notices following Executive Board discussions of papers on IMF policy issues; and (*e*) expanding public access to the IMF archives.

(*g*) Transformation of the Interim Committee on the International Monetary System into the International Monetary and Finance Committee

On 30 September 1999, the IMF Board of Governors approved a proposal of the Executive Board to transform the Interim Committee of the Board of Governors on the International Monetary System into the International Monetary and Finance Committee of the Board of Governors. In addition to the name change and the broadening of the mandate, the Board of Governors explicitly provided for preparatory meetings of representatives of the committee. The members of the new committee reflect the composition of the IMF Executive Board: each country that appoints, and each group that elects, an Executive Director appoints a member of the committee.

(*h*) Y2K facility

In September 1999, the IMF Executive Board approved the establishment of a temporary Y2K facility. Under the facility, IMF would extend short-term financing to countries that encountered balance-of-payments difficulties arising from loss of confidence or other problems related to potential or actual Y2K-related failures of computer systems. For a member to qualify for the facility, it must cooperate with IMF, address the Y2K problems that give rise to its balance-of-payments problems to the extent that they are within the country's control, have a generally sound policy stance and make appropriate use of its reserves and other available sources of external financing to meet its balance-of-payments difficulties. The facility is to expire on 31 March 2000.

(*i*) Enhanced Structural Adjustment Facility—change of name

In September 1999, the IMF International Monetary and Financial Committee endorsed the transformation of the Enhanced Structural Adjustment Facility, the Fund's concessional lending facility, into the Poverty Reduction and Growth Facility. The name of the facility was officially changed in November 1999.

(*j*) Initiative for Heavily Indebted Poor Countries—enhancements

In September 1999, the IMF International Monetary and Financial Committee and the Development Committee endorsed, subject to the availability of funding, enhancements to the Heavily Indebted Poor Countries (HIPC) framework. The en-

hanced HIPC Initiative seeks to provide deeper debt relief by lowering several of the mechanism's qualifying thresholds. In addition, it aims to deliver debt relief more quickly by introducing "floating" completion points not linked to a rigid time frame, but rather focusing on a set of predefined reforms. Under the enhanced HIPC Initiative, interim relief would be provided between a country's decision and completion points. The enhancements to the HIPC Initiative would also result in broadening debt relief by expanding the number of eligible countries.

(*k*) The Poverty Reduction Strategy Paper—linking debt relief and poverty reduction

At the September 1999 annual meetings, the International Monetary and Financial Committee and the Development Committee endorsed the adoption of the Poverty Reduction Strategy Paper as the central mechanism for developing and coordinating concessional lending to poor member countries under the Poverty Reduction and Growth Facility and the International Development Association, including the commitment of resources under the enhanced HIPC Initiative. Formulated by the country with the participation of stakeholders, including central and local government, civil society, donors and international organizations, the Paper describes and diagnoses the causes of poverty in a country and outlines a medium-term action plan to reduce poverty based on explicit anti-poverty measures as well as faster and more inclusive economic growth. This new approach places great emphasis on improvements in governance as a fundamental underpinning for macroeconomic stability, sustainable growth and poverty reduction. It also requires closer World Bank–IMF collaboration in assisting low-income countries, while at the same time there is a sharp division of labour between the World Bank and IMF in supporting preparation of the Papers.

In December 1999, the IMF Executive Board supported the thrust of the proposed policies and procedures for implementing the Poverty Reduction and Growth Facility and for linking programmes supported under the facility to the Poverty Reduction Strategy Paper. Under the new framework, IMF arrangements under the Poverty Reduction and Growth Facility must support and be consistent with the member's poverty reduction strategy. To ensure that IMF resources support a comprehensive poverty reduction strategy, a poverty reduction strategy paper that had been broadly endorsed by the Boards of the World Bank and the IMF would be a condition for IMF approval of a Poverty Reduction and Growth Facility arrangement, or for completion of a review thereunder. Directors generally agreed that a prerequisite for a new Poverty Reduction and Growth Facility arrangement, or a completion of a review would be endorsement of a Poverty Reduction Strategy Paper or progress report by the Boards of both IMF and the World Bank within the preceding 12 months. Taking note of the new framework for close cooperation and communication with the World Bank, the Directors welcomed the proposals to reduce overlapping conditionality. They agreed that for policies identified in the Poverty Reduction Strategy Paper, the staffs of IMF and the World Bank would decide jointly in which areas the Bank or IMF would take primary responsibility for supporting the government's policy formulation and for monitoring. During the transitional period needed for countries to prepare their first Poverty Reduction Strategy Paper under a participatory process, the Directors agreed that an interim Paper would underpin new Poverty Reduction and Growth Facility arrangements or new yearly programmes under the Facility. Finally, the Directors decided to review

the Facility by the end of 2001 in conjunction with a general review of the Poverty Reduction Strategy Paper approach.

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6. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Membership

During 1999, the membership of the Organization remained unchanged, at 185 States.

(*b*) Privileges, immunities and facilities

Ninety-seven States have undertaken to apply to ICAO the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the United Nations General Assembly in November 1947. No additional States undertook to apply the said Convention to ICAO during 1999.

(*c*) Conventions/Agreements

On 17 August 1999, the Protocol relating to an amendment to the Convention on International Civil Aviation[242] (Final Clause, Russian text), signed at Montreal on 30 September 1977,[243] entered into force, having reached 94 ratifications. Accordingly, the Protocol on the Authentic Quadrilingual Text of the Convention on International Civil Aviation (Chicago, 1944), signed at Montreal on 30 September 1977,[244] entered into force on 16 September 1999.

(*d*) Registration of agreements and arrangements

In 1999, the total number of agreements and arrangements registered with ICAO pursuant to article 83 of the Convention rose by 29 to 4,199.

(*e*) Collection of national aviation laws and regulations

The collection of national aviation laws and regulations in the Legal Bureau was maintained up to date on the bais of material received from States.

(*f*) Legal meetings

An International Conference on Air Law, convened by decision of the Council of 3 June 1998, met at Montreal from 10 to 28 May; 122 States and 11 observer delegations were represented. The purpose of the Conference was to adopt a new international legal instrument to modernize and consolidate the "Warsaw System" of air carrier liability. As a result of its deliberations, the Conference adopted by consensus the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999.[245] The Convention was opened for signature at Montreal on 28 May and on that day was signed by the delegations of 52 States. By the end of 1999, the Convention had been signed by 61 States and one regional economic integration organization, and had been ratified by one State.

The Final Act of the Conference was signed on behalf of 107 States and one regional economic integration organization. It includes the text of three resolutions which were adopted by the Conference by general consensus.

Two joint sessions of the subcommittee of the ICAO Legal Committee on International Interests in Mobile Equipment (Aircraft Equipment) and the International Institute for the Unification of Private Law (UNIDROIT) Committee of Governmental Experts were held in Rome from 1 to 12 February, and in Montreal from 24 August to 3 September 1999.

The Secretariat Study Group on Unruly Passengers held its first meeting from 25 to 26 January and its second meeting from 19 to 20 August 1999, both in Montreal.

The Secretariat Study Group on Legal Aspects of CNS/ATM Systems held its first and second meetings in Montreal from 7 to 8 April and from 20 to 21 October 1999.

(g) Work programme of the Legal Committee

The General Work Programme of the Legal Committee, as decided by the Council on 1 December 1999, comprised the following subjects in the order of priority indicated:

(i) Consideration, with regard to CNS/ATM systems, including global navigation satellite systems (GNSS), of the establishment of a legal framework;

(ii) Acts or offences of concern to the international aviation community not covered by existing air law instruments;

(iii) International interests in mobile equipment (aircraft equipment);

(iv) Review of the question of the ratification of international air law instruments;

(v) 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.

Regarding item (i), pursuant to Assembly resolution A32-20, the Secretariat Study Group on Legal Aspects of CNS/ATM Systems was established. The Group held its first meeting from 7 to 8 April and a second meeting was held from 20 to 21 October. During these meetings, the Group discussed the liability issues and other legal questions relating to CNS/ATM systems, such as universal accessibility and continuity of GNSS services.

Regarding item (ii), the Secretariat Study Group on Unruly Passengers held its first meeting from 25 to 26 January and a second meeting was held from 19 to 20 August. The Group focused on three major subjects, namely: the establishment of a list of specific offences for inclusion in national law; the extension of jurisdiction over such offences; and the appropriate mechanisms for addressing them.

Regarding item (iii), the Subcommittee of the ICAO Legal Committee on International Interests in Mobile Equipment (Aircraft Equipment) met jointly with a Committee of Governmental Experts of UNIDROIT to examine the text of a draft Convention and a draft Protocol. Two joint sessions were held in 1999 (Rome, 1 to 12 February and Montreal, 24 August to 3 September). A third joint session is scheduled to take place in Rome from 20 to 31 March 2000 and its outcome is intended to be presented to the Legal Committe at its next session.

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7. UNIVERSAL POSTAL UNION

(*a*) Legal status, privileges and immunities of the Universal Postal Union

No modification was made to the Conventions regulating the current legal status as well as the privileges and immunities of the organization.

Concerning the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations, the number of Union member countries which have adhered to the said Convention, granting privileges and immunities to the representatives of the member countries, to the staff of the International Bureau of the Universal Postal Union and to the experts, stands at 100.

(*b*) Beijing Congress

In the light of the Beijing Congress decisions, the Union bodies mentioned below would undertake the following studies, involving legal issues:

(i) *International law in the field of trade in services; WTO-UPU Memorandum of Understanding on cooperation*

The Beijing Congress instructed the Council of Administration, in conjunction with the International Bureau, to monitor developments in the field of international law concerning trade in services. This is to ensure that postal interests are taken into account and to extend cooperation between the two organizations through the establishment of a memorandum of understanding in the interest of member countries. This is also to ensure that the memorandum respects the functions and objectives proper to each organization; and to keep the UPU member countries informed of developments in the field.

(ii) *Continuation after the Beijing Congress of the study on the mission, structure and management of the work of the Union*

The 1999 Beijing Congress created a High Level Group which will examine strategic issues concerning the functioning of the Universal Postal Union in the overall context of the challenges facing the postal sector in the next century and their implications for the role and functioning of the Union in a rapidly changing environment.

The Group's mandate is to consider the future mission, structure constituency, financing and decision-making of UPU. Special emphasis will be placed on the development needs of postal services in developing countries and the need to more clearly define and distinguish between the governmental and operational roles and responsibilities of the bodies of the Union with respect to the provision of international postal services.

The High Level Group is to develop proposals for consideration by the Council of Administration. The Group is invited to present an interim report to the Council of Administration meeting in 2000 and a final report to the meeting of the same body in 2001.

The UPU Acts signed at the 1999 Beijing Congress—Sixth Additional Protocol to the Constitution of the Universal Postal Union, General Regulations of the Universal Postal Union, Universal Postal Convention and Postal Payment Services Agreement—will come into force on 1 January 2001.

The Congress accepted the results of the Recasting of the Acts study. Thus the new Universal Postal Convention adopted by the Beijing Congress incorporates only those provisions that are intergovernmental in nature or which are so fundamental that they require Congress approval. It also contains provisions governing the postal parcel service, which were previously in a separate Agreement

The regulations that derive from the Convention comprise all the rules that are not submitted to Congress. They are not limited to implementing the Convention, but also supplement it. That is why the two new sets of regulations are called "Letter Post Regulations" and "Parcel Post Regulations". Since they comprise provisions that are not intergovernmental in nature and do not require Congress approval, they are fixed by the Postal Operations Council.

The 1999 Beijing Congress merged three Acts of the 1994 Seoul Congress, namely the Money Orders, Giro and Cash-on-delivery Agreements, into a single agreement: the Postal Payment Services Agreement. Regulations to it are fixed by the Postal Operations Council.

The 1999 Beijing Congress introduced at the beginning of the Universal Postal Convention a new text concerning the universal postal service, stating that postal users and customers are entitled to quality basic postal services at all points in their territory, at affordable prices.

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8. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the Organization

During 1999, no new countries became members of the International Maritime Organization.

(*b*) Legal Committee—seventy-ninth and eightieth sessions

(*1*) *Provision of financial security in respect of passenger claims and other claims*

The Legal Committee, at its seventy-ninth (April 1999) and eightieth (October 1999) sessions,[246] continued its review of a draft Protocol containing proposed amendments to the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and the 1990 Protocol the Convention. The Convention established a liability regime for damage suffered by passengers on a seagoing vessel. The amendments were primarily to require the carrier to provide financial security for claimants through compulsory insurance of its liability.

The Committee discussed the following main issues:

(i) Whether or not liability insurance should be the only acceptable form of compulsory insurance, or whether other forms, especially personal accident insurance, could be an alternative, taking into account the view that European Union competition law may be infringed by a restriction to one type of insurance. A compromise between diverging positions was reached whereby the carrier that actually performs the carriage would be required to

insure its liability without, however, restricting the possible choices as to the different types of insurance available; account was taken of submissions by the P & I Clubs on limiting the insurer's exposure in the light of what the market could bear;

(ii) As regards jurisdiction, a proposal to limit the courts in which action could be brought against the insurer or other person providing financial security; no final decision was reached and it was agreed to revert to the matter at a later stage;

(iii) Incorporation of a provision to ensure compatibility with treaties regulating nuclear liability, namely, the Paris Convention of 29 July 1960 on Third Party Liability in the field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, and the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;

(iv) As regards limits of liability, the Committee was unable to reach any conclusion about revising the existing limits in the 1990 Protocol to the Athens Convention, or whether compensation should be substantially increased above the limits to be covered by compulsory insurance. Consideration was given to the relationship between limits per capita and the possibility of establishing an overall cap per incident, or per ship.

(v) On the subject of other claims, a draft Assembly resolution was approved containing IMO Guidelines on shipowners' responsibilities in respect of maritime claims, which was said by the delegation proposing it to be an opportunity for self-regulation by the industry;

(vi) Note was taken of an oral report on the deliberations of the Joint IMO/ILO Ad Hoc Expert Working Group to consider the subject of liability and compensation regarding claims for death, personal injury and abandonment of seafarers, on which further action would be taken.

(2) *Compensation for pollution from ships' bunkers*

The Legal Committee, at its seventy-ninth (April 1999) and eightieth (October 1999) sessions, continued its consideration of a draft convention on liability and compensation for damage caused by oil from ships' bunkers.

Issues discussed and decisions taken included:

(i) Using a definition of "shipowner" similar to that contained in the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC), which identifies a small group of responsible persons as the shipowner, i.e., the registered owner, the bareboat charterer and the manager and operator of the ship;

(ii) Incorporating provisions to require the registered owner to maintain compulsory insurance coverage and for direct action against the insurer;

(iii) Rejection of a proposal to amend the definition of "pollution damage" so as to retain consistency with the definition in the 1969 International Convention on Civil Liability for Oil Pollution Damage, as amended.

(3) *Draft convention on wreck removal*

The Legal Committee at its seventy-ninth (April 1999) and eightieth (October 1999) sessions, continued its consideration of the proposed convention on wreck removal, based on the report by the coordinator of the inter-sessional Correspon-

dence Group. The draft convention seeks to codify certain rules on wreck removal. Its purpose is to enable any coastal State affected to require shipowners to remove wrecks which are a hazard, and which are located in the State's exclusive economic zone outside its territorial seas.

The Committee discussed, inter alia, the definitions of wreck and hazard, the geographical scope of application, the right and obligation to remove hazardous wrecks, environmental risks and the relationship between the draft convention and other treaties such as the 1989 International Convention on Salvage and the 1982 United Nations Convention on the Law of the Sea. It was noted that the draft convention now excluded provisions on financial liability and compensation as well as reporting requirements. The Committee requested the Correspondence Group to continue its work.

(4) *Future work programme*

The Committee confirmed its main work programme for 2000, as follows:

(i) Provision of financial security;

(ii) Consideration of a draft convention on wreck removal;

(iii) Monitoring implementation of the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) (in respect of which a Correspondence Group was established);

(iv) Draft convention on offshore mobile craft.

The Committee also identified the following subjects as part of its long-term work programme beyond 2000:

(i) Consideration of the legal status of novel types of craft, such as air-cushion vehicles, operating in the marine environment;

(ii) A possible convention on the regime of vessels in foreign ports;

(iii) Possible revision of maritime law conventions in the light of proven need and subject to directives in resolutions A.500 (XII) and A.777(18) of the IMO Assembly.

(5) *Other matters*

Other matters dealt with by the Committee included:

(i) Noting the successful outcome of the United Nations/IMO Diplomatic Conference on Arrest of Ships (Geneva, 1999);

(ii) Endorsing a proposal to be implemented by the Comité Maritime International (CMI) to research the degree to which States parties to treaties adopted as a result of the Committee's work implemented them in a uniform way;

(iii) Considering solutions to the difficulties for ships registered in non-party States to the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC) in obtaining 1969 CLC certificates;

(iv) A decision to take into consideration the recommendations made by the Commission on Sustainable Development when considering relevant items of its work programme;

(v) Consideration of the possible adoption of a prospective liability Protocol to the 1989 Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal.

(*c*) Treaties

During 1999, no new treaties concerning international law were concluded under the auspices of the International Maritime Organization.

(*d*) Amendments to treaties

(1) *1999 amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974) (chapter VII)*

The Maritime Safety Committee (MSC), at its seventy-first session (May 1999), adopted by resolution MSC.87(71) amendments to chapter VII (Carriage of Dangerous Goods) of the SOLAS Convention.

The amendments provide for all ships carrying INF cargo to comply with the INF Code, i.e. the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships. INF cargo means INF carried as cargo in accordance with the International Maritime Dangerous Goods (IMDG) Code. The requirement does not apply to warships and certain other Government-owned vessels on non-commercial service provided that Administrations shall adopt measures to ensure reasonable compliance by such ships with the INF Code.

In accordance with the tacit amendment procedure provided for in article VIII(*b*)(vii)(2) of the Convention, and as determined by MSC, the amendments shall enter into force on 1 January 2001 unless, prior to 1 July 2000, more than one third of Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments.

(2) *1999 Amendments to Annexes I and II to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL 73/78)*

The Marine Environment Protection Committee (MEPC), at its forty-third session (July 1999), adopted by resolution MEPC.78(43) amendments to the Annex to the Protocol of 1978.

The amendments to annex I to MARPOL 73/78 provide for existing oil tankers between 20,000 and 30,000 tons deadweight carrying persistent product oil to be subject to the same construction requirements for crude oil tankers, and for amendments to the Supplement to the International Oil Pollution Prevention Certificate (IOPP Certificate). The amendments to annex II to MARPOL 73/78 provide for a shipboard marine pollution emergency plan for noxious liquid substances.

In accordance with the tacit amendment procedures provided for in articles 16(2)(*f*)(iii) and (*g*)(ii) of the 1973 Convention, and as determined by MEPC, the amendments shall enter into force on 1 January 2001 unless, prior to 1 July 2000, more than one third of Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments.

(3) *1999 Amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and to the Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk (BCH Code)*

The Marine Environment Protection Committee at its forty-third session (July 1999), by resolutions MEPC.79(43) and MEPC.80(43), respectively, in accordance with article VI of the 1978 Protocol and article 16 of MARPOL 73/78, adopted amendments to the IBC Code and the BCH Code.

Resolution MEPC.79 (43) referred to the desirability of the IBC Code, which is mandatory under both MARPOL 73/78 and the 1974 SOLAS Convention, remaining identical. The amendments were adopted mainly to chapter 8 of the IBC Code (Cargo-tank venting and gas-freeing arrangements), and prescribed the dates on which ships should comply with the Code, depending on the dates of their construction.

Resolution MEPC.80(43) recognized the need to bring the 1999 amendments to both the IBC and the BCH codes into force on the same date, and amendments similar to those made in resolution MEPC.79(43) were adopted to chapter II (Cargo containment) of the Code.

Under both resolutions, the Marine Environment Protection Committee determined, in accordance with article 16(2)(*f*)(iii) and (*g*)(ii) of the 1973 Convention, that the amendments shall enter into force on 1 July 2002 unless, prior to 1 July 2000, not less than one third of the parties or the parties, the combined merchant fleets of which constitute 50 per cent or more of the gross tonnage of the world's merchant fleet, have communicated to the IMO their objections to the amendments.

(4) *1999 amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as amended*

The Facilitation Committee, at its twenty-seventh session (September 1999), adopted by resolution FAL.6(27), in accordance with article VII of the Convention, a number of amendments to the annex to the Convention.

The amendments were made to a number of Standards and Recommended Practices related to electronic data-processing techniques, and arrival, stay and departure of ships and persons. A new chapter on illicit drug trafficking was also added.

The Facilitation Committee determined, in accordance with article VII(2)(*b*) of the Convention, that the amendments shall enter into force on 1 January 2001 unless, prior to 1 October 2000, at least one third of the Contracting Governments to the Convention have notified the Secretary-General in writing that they do not accept the amendments.

(*e*) Entry into force of instruments and amendments

(1) *Instruments*

During 1999, no IMO instruments entered into force.

(2) *Amendments*

(i) *1997 amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (chapters II-1, V)*

These amendments were adopted by the Maritime Safety Committee at its sixty-eighth session in June 1997 by resolution MSC.65(68).

The amendments were to chapter II-I: Construction—subdivision and stability, machinery and electrical installations; and to chapter V: Safety of navigation. The amendments concern special requirements for passenger ships, other than ro-ro passenger ships, carrying 400 persons or more, and vessel traffic services. The conditions for the entry into force of the amendments were met on 1 January 1999 and the amendments entered into force on 1 July 1999.

(ii) *1997 amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (new chapter XII and resolution A.744(18))*

These amendments were adopted on 27 November 1997 by a Conference of Contracting Governments to the Convention.

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 session of the IMO Assembly in 1993, and made mandatory by the 1994 amendments to the SOLAS Convention).

The conditions for the entry into force of the amendments were met on 1 January 1999 and the amendments entered into force on 1 July 1999.

(iii) *1997 amendments to annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) (regulation 10 and new regulation 25A of annex I)*

These amendments were adopted by the Marine Environment Protection Committee at its fortieth session (September 1997) by resolution MEPC.75(40).

The amendments were to regulation 10 (Methods for the prevention of oil pollution from ships while operating in special areas) designating the north-western European waters as a special area, and new regulation 25A (Intact stability), providing intact stability criteria for double-hull oil tankers.

The conditions for the entry into force of the amendments were met on 1 August 1998, and the amendments entered into force on 1 February 1999.

(iv) *1997 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (chapter V) and amendments to the Seafarers' Standards of Training, Certification and Watchkeeping Code (STWC Code)*

These amendments to chapter V and to the STCW Code were adopted by the Maritime Safety Committee at its sixty-eighth session in June 1997 by resolutions MSC.66(68) and MSC.67(68), respectively.

The amendments deal with mandatory minimum requirements for personnel serving on seagoing passenger ships and ro-ro passenger ships.

The conditions for entry into force of the amendments were met on 1 July 1998, and these amendments entered into force on 1 January 1999.

(3) *Amendments provisionally applied*

(i) *1998 Amendments to the Convention the International Mobile Satellite Organization (as amended)*

The amendments to the Convention for the restructuring of the INMARSAT, which were adopted by the Inmarsat Assembly, at its twelfth session, on 24 April

1998, were applied provisionally, as from 15 April 1999, on the authority of the Assembly, pending and subject to the entry into force of the amendments in accordance with article 34 of the Convention.

(ii) *1998 Amendments to the Operating Agreement on the International Mobile Satellite Organization (as amended)*

The amendments to the Operating Agreement for the restructuring of the INMARSAT, adopted by the Inmarsat Assembly, at its twelfth session, on 24 April 1998, were applied provisionally as from 15 April 1999, on the authority of the Assembly, pending and subject to the entry into force of the amendments in accordance with article XVIII of the Operating Agreement.

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9. WORLD INTELLECTUAL PROPERTY ORGANIZATION

(*a*) Introduction

1. The year 1999 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 (cooperation for development); 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*) Cooperation for development activities and implementation of the TRIPS Agreement

2. The main forms in which WIPO provided assistance to developing countries in the fields of industrial property and copyright and related 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 and the implementation of the 1994 Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement).

3. In view of the 1 January 2000, implementation date provided in the TRIPS Agreement, cooperation with developing and least developed countries for the implementation of the TRIPS Agreement was high on the agenda of WIPO in 1999. The work entailed helping countries bring their national laws and administrative and enforcement structures in line with their TRIPS obligations. In 1999, WIPO prepared 61 draft laws for 33 developing countries and regional organizations and provided written comments on another 66 draft laws received from 31 countries or secretariats of regional organizations.

4. In 1999, a new division was set up to ensure that the collective management of copyright and related rights makes a full contribution to the economic and social development of countries and offers tangible, immediate and long-term benefits to creators. To pursue this goal, WIPO cooperated actively with the Governments of developing countries in the establishment or strengthening and modernizing of collective management organizations.

5. The WIPO Worldwide Academy, the specialized arm of the cooperation for development programme dedicated to enhancing and empowering human resources in the intellectual property field, was particularly active in 1999. The Academy successfully launched an Internet-based, nine-module course on intellectual property in English, French and Spanish, with a total of some 480 registered students in the three languages. A total of 11 tutors were engaged to supervise the coursework of the participants, with all interaction taking place in cyberspace.

(*c*) Norm-setting activities

6. One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States. This is achieved through the progressive development of international approaches in the protection, administration and enforcement of intellectual property rights.

7. Accelerating the growth of international common principles and rules governing intellectual property calls for ways and means other than diplomatic conferences and treaties. As a result, three Standing Committees on legal matters—one to deal with copyright matters, one with patent matters and one with matters relating to trademarks, industrial designs and geographical indications—each operate as a streamlined means by which member States may set priorities, allocate resources and ensure coordination of work.

8. Membership of each Committee is made up of the WIPO member States, selected intergovernmental organizations and international non-governmental organizations. Each of the three Standing Committees met in one or more sessions in the course of 1999.

(*d*) Standing Committee on Trademarks (SCT)

9. The Standing Committee dealing with the law of trademarks, industrial designs and geographical indications met three times in 1999. It reached agreement in June on a set of new guidelines to improve protection for well-known marks. The new international guidelines, adopted by member States in September, require that a well-known mark be protected in a member State on the grounds that it is well known, even if the mark is not registered or used in that country. Similar conditions were established for the protection of well-known marks in relation to business identifiers and domain names. The new guidelines represent a step forward in WIPO efforts to encourage and facilitate the development of internationally harmonized principles and rules in the intellectual property arena.

10. The Committee continued discussions throughout the year on the use of trademarks and identifying signs on the Internet. It agreed to a list of general principles, which included the recognition that trademark protection should apply to the Internet and that trademarks should be able to coexist in cyberspace under the appropriate laws of each member State. The principles are intended to serve as a basis for continuing SCT discussions on trademarks on the Internet. SCT also discussed efforts to harmonize procedures regarding the licensing of trademarks, and agreed that the WIPO secretariat should initiate a study of conflicts between trademarks, geographical indications and homonymous geographical indications, i.e., the problems that arise when two parties using a geographical name that exists in different countries use that same name to identify similar products of different origin.

(e) Standing Committee on Copyright and Related Rights

11. The Standing Committee dealing with copyright questions met twice in 1999. Members continued discussions on the protection of audio-visual performances, databases and the rights of broadcasting organizations. Concerning the question of a treaty regarding audio-visual performances, the Committee recommended that a preparatory committee and an extraordinary session of the WIPO Assembly be convened in April 2000 to consider holding a diplomatic conference on a new treaty. Established in 1996, the WIPO Performances and Phonograms Treaty protects audio performances only and does not cover audio-visual performances.

12. The Committee agreed that more detailed information and documentation was necessary on the economic implications of granting additional protection—more than that afforded under existing copyright law—to databases, particularly in the case of developing countries in transition to market economies.

13. Consultations were held in various regions throughout the year to discuss the impact that additional protection of databases would have on the flow of information and data and how that might affect developing economies. Regarding the rights of broadcasting organizations, the Committee discussed the possible need for a new international instrument to update the existing rights of broadcasting organizations, which were covered in the Rome Convention of 1961 but not dealt with in the WIPO Performances and Phonograms Treaty.

(f) Standing Committee on Patents

14. The Standing Committee dealing with patent law met twice in 1999. The focus of its work involved the final preparations of the draft text of the Patent Law Treaty, which covers formal administrative requirements for the filing of patent applications in patent offices. The proposed treaty will greatly simplify and harmonize the patent application process for inventors around the world, leading to a much quicker and more cost-effective way to obtain patent protection for their inventions.

15. The Committee also agreed that the Patent Law Treaty should be linked more closely to the Patent Cooperation Treaty (PCT); such a linkage would result in more common standards for both national and international patent applications, which would further harmonize and streamline the process of obtaining patent protection.

16. The Committee agreed that a diplomatic conference would be held in Geneva in May and June 2000, at which the draft text of the Patent Law Treaty would be submitted for negotiation.

(g) International registration activities

17. Of most direct benefit and interest to the market sector and enterprises of the work of WIPO are its international registration services. Such services are provided in close cooperation with the industrial property administrations of countries which have adhered to the Patent Cooperation Treaty system, the Madrid Agreement for the International Registration of Marks and/or its Protocol (commonly known as the Madrid system) and the Hague Agreement for the International Deposit of Industrial Designs (the Hague system). Collectively, the WIPO global protection

systems generated in 1999 total gross revenue of about 186 million Swiss francs or the equivalent of about 85 per cent of the organization's total income for 1999.

(*h*) Patents

18. Applications under the Patent Cooperation Treaty in 1999 totalled just over 74,000, representing a rise of 10.5 per cent over the total for 1998.

19. As the users of the Patent Cooperation Treaty are driven by business and market considerations, WIPO is vigilant in ensuring that its services remain efficient and cost-effective at all times. Throughout 1999, therefore, improvements were introduced to ensure higher customer satisfaction.

20. In January, the PCT-EASY (Electronic Application System) software became available, facilitating the preparation of international applications and enabling applicants to avoid mistakes at the filing stage by using about 200 computerized validation checks.

21. In September, the PCT member States took some decisions on fees which would have the effect, from 1 January 2000, of decreasing the international fee payable by an applicant by up to 17 per cent. Another important decision would allow, with effect from 1 January 2000, an applicant to claim the priority of a patent application filed in or for any member of the World Trade Organization which is not a party to the Paris Convention for the Protection of Industrial Property.

(*i*) Marks

22. In 1999, international registrations under the Madrid Agreement and the Madrid Protocol were just over 20,000, maintaining the landmark figure of 20,000 reached in 1998.

23. Like the PCT system, the Madrid computerized system continued to be improved throughout 1999. In particular, the computer system for the digitization, management and electronic archiving of documents was replaced by a new system with enhanced capacity.

24. Throughout the year the WIPO secretariat undertook many activities which aimed at making the system better known to potential member States and at promoting greater use by current member States. Such promotional activities included study visits to WIPO, advisory missions to countries, training on the job and at WIPO, seminars, as well as improving and updating relevant information on the WIPO Internet site.

(*j*) Industrial designs

25. In 1999, there was an encouraging growth in the use of the Hague system. Whereas in 1997 and 1998, the number of international deposits of designs remained steady, in 1999 it rose to 4,093, a 3 per cent increase over 1998.

26. Of great significance for the future health of the Hague system was the adoption in July of a new Act (the Geneva Act) of the Hague Agreement. This new Act should help fulfil the tremendous potential of the Hague system by offering an even more flexible, cost-effective and user-friendly means for companies and individuals worldwide to protect their industrial designs.

(*k*) Electronic commerce; Internet domain names

27. Throughout 1999, WIPO continued to foster an open debate on intellectual property issues relating to electronic commerce. In September, WIPO brought together leaders from the public and private sectors throughout the world to debate at its first International Conference on Electronic Commerce and Intellectual Property. More than 750 participants, including representatives from WIPO member States, intergovernmental and non-governmental organizations and industry, convened in Geneva for three days to discuss the global implications for intellectual property in the burgeoning field of electronic commerce. An equal number followed the proceedings via a live "net-cast"of the conference on the Internet, and CD-ROM summaries of conference materials were produced following the gathering.

28. Topics discussed during the conference included the online delivery of publications, music, films and software, and the resulting questions of copyright protection; domain names and trademarks on the Internet and the importance of protecting "identity online"; electronic rights management; online dispute settlement and liability; and a host of other intellectual property issues relating to the rapid rise of global electronic commerce. At the conclusion of the conference, the Director General of WIPO presented the WIPO Digital Agenda, a ten-point outline of the organization's goals in adapting intellectual property law to the digital age.

(*l*) Internet domain names

29. In April 1999, WIPO issued a report and recommendations aimed at curbing the abuse of trademarks on the Internet. The report, which followed a lengthy consultation process involving 17 regional consultations in 15 different countries, led directly to the adoption of an international set of rules called the Uniform Dispute Resolution Policy applicable to top-level domains (Internet addresses ending in .com, .net and .org).

30. The "Final report on the management of Internet names and addresses: intellectual property issues" identified the practice of "cybersquatting"—the bad-faith registration of a well-known trademark as a domain name, often followed by an attempt by the registrant to sell the domain name to the mark's legitimate owner for substantial profit—as among the key problems relating to trademark abuses on the Internet.

31. The report made several key recommendations, addressing the areas of dispute prevention, the establishment of a uniform system of dispute resolution across the Internet domain name space, the protection of famous and well-known marks in generic top-level domains and the impact on intellectual property of the possible addition of new top-level domains. The report was the result of extensive and open consultations involving more than 1,200 participants from the private and public sectors of some 74 countries, aided in large part by an electronic forum on the WIPO Internet Domain Name Process web site, which posted audio and text records of the consultations and received comments and suggestions throughout the process.

32. The report's recommendations for establishing the Uniform Dispute Resolution Policy applicable to the top-level domains (.com, .net and .org) was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) in August 1999. The first case filed under the Uniform Policy was received at the

WIPO Arbitration and Mediation Centre on 2 December, one day after the new rules took effect.

(*m*) WIPO Arbitration and Mediation Centre

33. The Centre continued to expand its efforts in providing quick, inexpensive and readily available alternatives to costly court proceedings in commercial disputes involving intellectual property rights.

34. In 1999, the Centre finalized development of its online dispute resolution service, which will allow involved parties to communicate via the Internet, without being physically present in the same place, thus greatly reducing the time and cost of reaching a solution. This type of service is especially helpful for parties exploiting their intellectual property rights across borders which need an international facility for resolving disputes.

35. An extensive redesign and expansion of the Centre's web site, including access to the Centre's information in three languages, led to a more than fourfold increase in the number of visits to the site, reaching some 82,000 per month by year-end. The Centre's database of specialized arbitrators and mediators expanded to 850 individuals from 68 countries, and 94 paying participants attended the Centre's training programmes throughout the year.

36. Following the adoption by ICANN of the Uniform Dispute Resolution Policy applicable to top-level domain names, the Centre was accredited by ICANN to administer cases filed under the Uniform Policy. The Centre began processing claims in December 1999.

(*n*) Intellectual property and global issues

37. During 1999, nine fact-finding missions were conducted in various regions to gather information on the intellectual property needs of holders of indigenous knowledge; a compilation of studies on human rights and intellectual property was published, helping to raise awareness of the links between the two areas; and a working group on biotechnology was formed to identify key focal points and develop a work programme in this area. In November, WIPO held a two-day round table that brought together traditional knowledge practitioners with representatives from government, research institutions, industry and academia to examine the role of the intellectual system in protecting traditional knowledge.

(*o*) New members and new accessions

38. In 1999, there were 68 adherences by countries to WIPO treaties. Some 60 per cent of the new adherences (accessions or ratifications) came from developing countries. Membership of WIPO at the end of 1999 stood at 173.

39. The following figures show the new adherences to treaties that are in force, with the second figure in parenthesis being the total number of States party to the corresponding treaty by the end of 1999:

—WIPO Convention: 2 (173)

—Paris Convention for the Protection of Industrial Property: 6 (157)

—Patent Cooperation Treaty: 6 (106)

—Protocol Relating to the Madrid Agreement concerning the International Registration of Marks: 7 (43)

—Trademark Law Treaty: 3 (25)

—Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks: 2 (60)

—Locarno Agreement Establishing an International Classification for Industrial Designs: 2 (37)

—Strasbourg Agreement concerning the International Patent Classification: 2 (45)

—Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 2 (15)

—Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedure: 2 (48)

—Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: 1 (19)

—Berne Convention for the Protection of Literary and Artistic Works: 11 (142)

—Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (jointly administered with ILO and UNESCO): 3 (63)

—Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms: 3 (60).

—Brussels Convention relating to the Distribution of Programme-carrying Signals Transmitted by Satellite: 2 (24)

40. Furthermore, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (the WIPO "Internet Treaties") received, respectively, six and seven new adherences, bringing the total to 12 and 11 respectively at the end of 1999. Each Treaty requires 30 adherences to enter into force.

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10. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947

In 1999, no State became party to the Convention in respect of UNIDO.

(*b*) Agreements with Governments[247]

UNIDO concluded the following agreements and memoranda of understanding:

(i) Basic cooperation agreement between the United Nations Industrial Development Organization and the Government of the Republic of Ghana. Signed on 2 December

(ii) Agreement between the United Nations Industrial Development Organization and the Government of the Republic of Ghana regarding the establishment of a UNIDO country office in Ghana covering Benin and Togo. Signed on 2 December

(iii) Memorandum of Understanding between the United Nations Industrial Development Organization and the Ministry of Industry, Government of the Republic of India. Signed on 22 March

(iv) Memorandum of Understanding between the Government of the Islamic Republic of Iran and the United Nations Industrial Development Organization concerning the establishment of a UNIDO country office in Tehran. Signed on 1 December

(v) Memorandum of Understanding between the Government of the Republic of Korea and the United Nations Industrial Development Organization on the provision of associate experts. Signed on 29 October and 5 November

(vi) Protocol on the framework programme of cooperation between the United Nations Industrial Development Organization and the Russian Federation for the years 1999-2002. Signed on 24 August

(vii) Agreement between the United Nations Industrial Development Organization and the Government of the Slovak Republic concerning the establishment of a UNIDO investment promotion service in Bratislava. Signed on 25 June

(viii) Agreement between the United Nations Industrial Development Organization and the Ministry of Industrial Development to establish the national focal point office in Colombo, Sri Lanka. Signed on 14 May and 29 June

(ix) Agreement between the United Nations Industrial Development Organization and the Government of Tunisia regarding the establishment of a UNIDO country office in Tunis. Signed on 10 June

(x) Agreement between the United Nations Industrial Development Organization and the Government of the Republic of Turkey regarding the establishment of a UNIDO centre for regional cooperation in Turkey. Signed on 9 February

(*c*) Agreements with intergovernmental, governmental, non-governmental and other organizations and entities

(i) Memorandum of Understanding between the United Nations Industrial Development Organization and the Automotive Component Manufacturers Association (India). Signed on 18 January and 15 March, respectively

(ii) Cooperative arrangement between the United Nations Industrial Development Organization and the Government of the Republic of Bashkortostan, Russian Federation. Signed on 23 April

(iii) Memorandum of Understanding between the United Nations Industrial Development Organization and M. V. Lomonosov Moscow State University. Signed on 30 June

(iv) Agreement between the United Nations Industrial Development Organization and the National Agency of Ukraine for Development and European Integration, Kiev. Signed on 2 and 7 September

(v) Memorandum of Understanding between the United Nations Industrial Development Organization and the National Institute of Cooperative and Mutual Action (Argentina). Signed on 17 February

(vi) Joint communique between the Director-General of the United Nations Industrial Development Organization and the Minister of Industry of the Palestinian Authority, signing for the Palestinian Liberation Organization and the Palestinian Authority. Signed on 28 April

(vii) Agreement between the United Nations Industrial Development Organization and the Technology Development Foundation of Turkey concerning the provision of services related to project identification, formulation and implementation for the ozone-depleting substances (ODS) phase-out programme in Turkey. Signed on 9 November and 2 December

(viii) Memorandum of Understanding between the United Nations Industrial Development Organization and The Chancellor, Masters and Scholars of the University of Oxford. Signed on 6 October

(*d*) Agreements with the United Nations or its organs

(i) Letter of agreement between the UNDP country office in the Russian Federation and the United Nations Industrial Development Organization on collaboration in the Russian Federation. Signed on 25 January

(ii) Letter of understanding between the United Nations Development Programme country office in India and the United Nations Industrial Development Organization on collaboration in India. Signed on 23 March

(iii) Letter jointly signed by the Director-General of the United Nations Industrial Development Organization and the Administrator of the United Nations Development Programme containing an annex on cooperation at the country level through the industrial development officers system. Signed on 24 November

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11. WORLD TRADE ORGANIZATION

(*a*) Director-General

After many months of consultations, the General Council, on 22 July 1999, decided on the appointment of two Directors-General to serve in succession, each for a period of three years (WT/L/308):

—The Right Honourable Mike Moore of New Zealand as Director-General for three years from 1 September 1999 to 31 August 2002

to be followed by

—H.E. Mr. Supachai Panitchpakdi of Thailand as Director-General for three years from 1 September 2002 to 31 August 2005

(*b*) Membership

WTO membership is open to any State or customs territory having full autonomy in the conduct of its trade policies. Accession negotiations concern all aspects of the applicant's trade policies and practices, such as market access concessions and commitments on goods and services, legislation to enforce intellectual property rights and all other measures which form a Government's commercial policies. Applications for WTO membership are the subject of individual working parties. Terms and conditions related to market access, such as tariff levels and commercial presence for foreign service suppliers, are the subject of bilateral negotiations. A WTO working party was established on 31 July 1999 for the following 30 Governments (still current as of 31 December 1999):

Albania, Algeria, Andorra, Armenia, Azerbaijan, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, China, Croatia, Kazakhstan, Lao People's Democratic Republic, Lebanon, Lithuania, Nepal, Oman, Republic of Moldova, Russian Federation, Samoa, Saudi Arabia, Seychelles, Sudan, Taiwan Province of China, the former Yugoslav Republic of Macedonia, Tonga, Ukraine, Uzbekistan, Vanuatu and Viet Nam.

As of 31 December 1999, there were 135 members of WTO, accounting for more than 90 per cent of world trade. Many of the countries that remain outside the world trade system have requested accession to WTO and are at various stages of a process that has become more complex due to the more expansive coverage relative of WTO to its predecessor, the General Agreement on Tariffs and Trade (GATT).

During 1999, WTO received the following new members:

—Latvia (10 February 1999) by Protocol of Accession (14 October 1998, WT/ACC/LVA/35), Council decision WT/ACC/LVA/34

—Estonia (13 November 1999) by Protocol of Accession (21 May 1999, WT/ACC/EST/30), Council decision WT/ACC/EST/29

It is also important to note the following Council decisions in 1999 authorizing the accession of:

—Georgia, by Protocol of Accession (28 October 1999, WT/ACC/GEO/33), Council decision WT/ACC/GEO/32

—Jordan (17 December 1999, WT/ACC/JOR/35), Council decision WT/ACC/JOR/34

Both Jordan and Georgia are expected to become the 136th and 137th members of WTO upon completion of internal ratification procedures in 2000.

The General Council also established a working party to examine the application for accession of Bhutan.

(*c*) Waivers

In 1999, the General Council granted a number of waivers from obligations under the WTO Agreement (listed in the table on p. 263)

Waivers under article IX of the WTO Agreement[248]

Member	*Type*	*Decision of*	*Expiry*	*Document*
	Preferential tariff treatment for least-developed countries	15 June 1999	30 June 2009	WT/L/304
Argentina, Australia, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Costa Rica, Egypt, El Salvador, Honduras, Iceland, India, Israel, Malaysia, Maldives, Mexico, Morocco, Paraguay, Slovenia, Switzerland, Thailand, Tunisia, Uruguay, Venezuela	Introduction of Harmonized System changes into WTO schedules of tariff concessions on 1 January 1996 — Extension of time limit	15 June 1999	31 October 1999	WT/L/303
Bangladesh	Implementation of the Harmonized Commodity Description and Coding System — Extension of time limit	15 June 1999	31 October 1999	WT/L/299
	Establishment of a new schedule — Extension of time limit	4 November 1999	30 April 2000	WT/L/336
Nicaragua	Implementation of the Harmonized Commodity Description and Coding System — Extension of time limit	15 June 1999	31 October 1999	WT/L/300
	Establishment of a new schedule — Extension of time limit	4 November 1999	30 April 2000	WT/L/334
Peru	Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994	15 July 1999	1 April 2000	WT/L/307
Sri Lanka	Implementation of the Harmonized Commodity Description and Coding System — Extension of time limit	15 May 1999	31 October 1999	WT/L/301
	Establishment of a new schedule — Extension of time limit	4 November 1999	30 April 2000	WT/L/335
Zambia	Renegotiation of schedule — Extension of time limit	15 June 1999	31 October 1999	WT/L/302
	Renegotiation of schedule — Extension of time limit	4 November 1999	30 April 2000	WT/L/337

Source: WTO annual reports, 1999 and 2000.

(*d*) Resolution of trade conflicts under the WTO Dispute Settlement Understanding

(i) *Overview*

The General Council convenes as the Dispute Settlement Body to deal with disputes arising from any agreement contained in the Final Act of the Uruguay Round that is covered by the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Dispute Settlement Body has the sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations and authorize suspension of concessions in the event of non-implementation of recommendations.

(ii) *Dispute settlement activity for 1999*

In 1999, the Dispute Settlement Body received 15 notifications from members of formal requests for consultations under the Dispute Settlement Understanding. During this period, the Dispute Settlement Body established panels to deal with 12 new matters and adopted Appellate Body and/or panel reports in 10 cases. The Dispute Settlement Body also received one notification from members of a mutually agreed solution (settlement) of a dispute. In another case the request for a panel was withdrawn because the contested measure had been withdrawn. One other panel suspended its work at the request of the complaining party.

This section briefly describes the procedural history and, where available, the substantive outcome of these cases. It also describes the implementation status of adopted reports where new developments occurred in the period covered; cases in which a panel report has been circulated but where an appeal is pending before the Appellate Body, and cases for which panel reports were issued but not yet adopted or appealed.

(iii) *Appellate Body and/or panel reports adopted*

Turkey—Restrictions on Imports of Textile and Clothing Products, complaint by India (WT/DS34/1). This request, dated 21 March 1996, claimed that Turkey's imposition of quantitative restrictions on imports of a broad range of textile and clothing products was inconsistent with articles XI and XIII of GATT 1994, as well as article 2 of the Agreement on Textiles and Clothing (ATC). Earlier, India had requested to be joined in the consultations between Hong Kong SAR and Turkey on the same subject matter (WT/DS29). On 2 February 1998, India requested the establishment of a panel. At its meeting on 13 March 1998, the Dispute Settlement Body established a panel. Thailand, Hong Kong SAR, China, the Philippines and the United States of America reserved their third-party rights. The panel found that Turkey's measures were inconsistent with articles XI and XIII of GATT 1994, and consequently inconsistent also with article 2.4 of TC. The panel also rejected Turkey's assertion that its measures were justified by article XXIV of GATT 1994. The report of the panel was circulated to members on 31 May 1999. On 26 July 1999, Turkey notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body upheld the panel's conclusion that article XXIV of GATT 1994 did not allow Turkey to adopt, upon the formation of a customs union with the European Communities, quantitative restrictions which were found to be inconsistent with articles XI and XIII of GATT 1994 and article 2.4 of ATC. However, the Appellate Body concluded that the panel had erred

in its legal reasoning in interpreting article XXIV of GATT 1994. The report of the Appellate Body was circulated on 21 October 1999. At its meeting on 19 November 1999, the Dispute Settlement Body adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

Canada—Measures Affecting the Importation of Milk and the Exportation of Dairy Products (WT/DS103/1), complaint by the United States. The request, dated 8 October 1997, was in respect of export subsidies allegedly granted by Canada on dairy products and the administration by Canada of the tariff-rate quota on milk. The United States argued that the Canadian export subsidies distorted markets for dairy products and adversely affected United States sales of dairy products. The United States alleged violations of articles II, X and XI of GATT 1994, articles 3, 4, 8, 9 and 10 of the Agreement on Agriculture, article 3 of the Subsidies Agreement, and articles 1, 2 and 3 of the Import Licensing Agreement. On 2 February 1998, the United States requested the establishment of a panel, which was established on 25 March 1998. Australia and Japan reserved their third-party rights. The panel found that the measures complained against were inconsistent with Canada's obligations under article II:1(*b*) of GATT 1994, and articles 3.3 and 8 of the Agreement on Agriculture by providing export subsidies as listed in article 9.1(*a*) and (*c*) of the Agreement on Agriculture. The report of the panel, which also covered a New Zealand complaint (DS113 below), was circulated to members on 17 May 1999. On 15 July 1999, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the panel (which appeal also included DS113 below). The Appellate Body reversed the panel's interpretation of article 9.1(*a*) and, in consequence, reversed the panel's finding that Canada had acted inconsistently with its obligations under article 3.3 and 8 of the Agreement on Agriculture. However, the Appellate Body upheld the panel's finding that Canada was in violation of article 3.3 and 8 of the Agreement on Agriculture in respect of export subsidies listed in article 9.1(*c*) of the Agreement on Agriculture. In addition, the Appellate Body partly reversed the panel's finding that Canada had acted inconsistently with its obligations under article II:1(*b*) of GATT 1994. The report of the Appellate Body was circulated on 13 October 1999. At its meeting on 27 October 1999, the Dispute Settlement Body adopted the Appellate Body report and the panel's report, as modified by the Appellate Body report.

Canada—Measures Affecting Dairy Products, complaint by New Zealand (WT/DS113/1). This request, dated 29 December 1997, was in respect of an alleged dairy export subsidy scheme commonly referred to as the "special milk classes" scheme. New Zealand contended that the Canadian "special milk classes" scheme was inconsistent with article XI of GATT and articles 3, 8, 9 and 10 of the Agreement on Agriculture. On 12 March 1998, New Zealand requested the establishment of a panel. On 25 March 1998, the Dispute Settlement Body established a panel. Australia and Japan reserved their third-party rights. Pursuant to article 9.1 of the Dispute Settlement Understanding, the Dispute Settlement Body decided that the same panel established in respect of DS103 above should also examine this dispute (see DS103 above).

India—Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, complaint by the United States (WT/DS90/1). This request, dated 15 July 1997, was in respect of quantitative restrictions maintained by India on importation of a large number of agricultural, textile and industrial products. The United States contended that these quantitative restrictions, including the more than 2,700

agricultural and industrial product tariff lines notified to WTO, were inconsistent with India's obligations under articles XI:1 and XVIII:11 of GATT 1994, article 4.2 of the Agreement on Agriculture, and article 3 of the Agreement on Import Licensing Procedures. On 3 October 1997, the United States requested the establishment of a panel. The Dispute Settlement Body established a panel on 18 November 1997. The report of the panel was circulated to members on 6 April 1999. The panel found that the measures at issue were inconsistent with India's obligations under articles XI and XVIII:11 of GATT 1994 and, to the extent that the measures applied to products subject to the Agreement on Agriculture, were inconsistent with article 4.2 of the Agreement on Agriculture. The panel also found the measures to be a nullification or impairment of benefits accruing to the United States under GATT 1994 and the Agreement on Agriculture. On 26 May 1999, India notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The report of the Appellate Body was circulated to members on 23 August 1999. The Appellate Body upheld all of the findings of the panel that were the subject of the appeal. The Dispute Settlement Body adopted the panel and Appellate Body reports at its meeting on 22 September 1999.

Brazil—Export Financing Programme for Aircraft, complaint by Canada (WT/DS46). On 19 June 1996, Canada requested consultations with Brazil, based on article 4 of the Subsidies Agreement, which provides for special procedures for export subsidies. Canada claimed that export subsidies granted under the Brazilian *Programa de Financiamento às Exportações (PROEX)*, to foreign purchasers of Brazil's Embraer aircraft, were inconsistent with the Subsidies Agreement articles 3, 27.4 and 27.5. Canada requested the establishment of a panel on 16 September 1996, alleging violations of both the Subsidies Agreement and GATT 1994. The Dispute Settlement Body considered the request at its meeting on 27 September 1996. Due to Brazil's objection to the establishment of a panel, Canada agreed to modify its request, limiting the scope of the request to the Subsidies Agreement. The modified request was submitted by Canada on 3 October 1996 but was subsequently withdrawn prior to a Dispute Settlement Body meeting at which it was to be considered. On 10 July 1998, Canada again requested the establishment of a panel and, on 23 July 1998, the Dispute Settlement Body established a panel. The United States reserved its rights as a third party to the dispute. The panel found that Brazil's measures were inconsistent with articles 3.1(*a*) and 27.4 of the Subsidies Agreement. The report of the panel was circulated to members on 14 April 1999. On 3 May 1999, Brazil notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body upheld all the findings of the panel, but reversed and modified the panel's interpretation of the "material advantage" clause in item (*k*) of the Illustrative List of Export Subsidies in annex I to the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The report of the Appellate Body was circulated to members on 2 August 1999. The Dispute Settlement Body adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on 20 August 1999.

Canada—Measures Affecting the Export of Civilian Aircraft, complaint by Brazil (WT/DS70). This request, dated 10 March 1997, was in respect of certain subsidies granted by the Government of Canada or its provinces intended to support the export of civilian aircraft. The request was made pursuant to article 4 of the Subsidies Agreement. Brazil contended that the measures were inconsistent with article 3 of the Agreement. On 10 July 1998, Brazil requested the establishment of a panel. At its meeting on 23 July 1998, the Dispute Settlement Body established a

panel. The United States reserved its rights as a third party in the dispute. The panel found that certain of Canada's measures were inconsistent with articles 3.1(*a*) and 3.2 of the Subsidies Agreement, but rejected Brazil's claim that assistance by Export Development Canada (EDC) to the Canadian regional aircraft industry constituted export subsidies. The report of the panel was circulated to members on 14 April 1999. On 3 May 1999, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body upheld the findings of the panel. The report of the Appellate Body was circulated to members on 2 August 1999. The Dispute Settlement Body adopted the Appellate Body and panel reports on 20 August 1999.

Australia—Subsidies Provided to Producers and Exporters of Automotive Leather, complaint by the United States (WT/DS126/1). The request, dated 4 May 1998, was in respect of prohibited subsidies allegedly provided to Australian producers and exporters of automotive leather, including subsidies provided to Howe and Company Pty Ltd. (or any of its affiliated and/or parent companies), which allegedly involved preferential government loans of about A$25 million and non-commercial terms and grants of about A$30 million. The United States contended that those measures violated the obligations of Australia under article 3 of the Subsidies Agreement. On 11 June 1998, the United States requested the establishment of a panel. At its meeting on 22 June 1998, the Dispute Settlement Body established a panel. The panel found that the loan from the Australian Government to Howe/ALH was not a subsidy contingent upon export performance within the meaning of article 3.1(*a*) of the SCM Agreement, but that the payments under the grant contract were subsidies within the meaning of article 1 of the SCM Agreement, which are contingent upon export performance within the meaning of article 3.1(*a*) of that Agreement. The report of the panel was circulated to members on 25 May 1999. At its meeting on 16 June 1999, the Dispute Settlement Body adopted the panel report.

Japan—Measures Affecting Agricultural Products, complaint by the United States (WT/DS/6/1). This request, dated 7 April 1997, was in respect of the prohibition by Japan, under quarantine measures, of imports of agricultural products. The United States alleged that Japan prohibited the importation of each variety of a product requiring quarantine treatment until the quarantine treatment was tested for that variety, even if the treatment proved to be effective for other varieties of the same product. The United States alleged violations of articles 2, 5 and 8 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), article XI of GATT 1994, and article 4 of the Agreement on Agriculture. In addition, the United States claimed nullification and impairment of benefits. On 3 October 1997, the United States requested the establishment of a panel, which was established on 18 November 1997. The European Communities, Hungary and Brazil reserved their third-party rights. The panel found that Japan had acted inconsistently with articles 2.2 and 5.6 of the SPS Agreement, and annex B and, consequently, article 7 of the SPS Agreement. The report of the panel was circulated to members on 27 October 1998. On 24 November 1998, Japan notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body upheld the basic finding that Japan's varietal testing of apples, cherries, nectarines and walnuts was inconsistent with the requirements of the SPS Agreement. The report of the Appellate Body was circulated to members on 22 February 1999. The Dispute Settlement Body adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on 19 March 1999.

United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabyte or Above from the Republic of Korea, complaint by the Republic of Korea (WT/DS99/1). This request, dated 14 August 1997, was in respect of a decision of the United States Department of Commerce not to revoke the anti-dumping duty on dynamic random access memory semi-conductors (DRAMS) of one megabyte or above originating from the Republic of Korea. The Republic of Korea contended that the Department of Commerce decision had been made despite the finding that the Korean DRAM producers had not dumped their products for a period of more than three and a half consecutive years, and despite the existence of evidence demonstrating conclusively that Korean DRAM producers would not engage in dumping DRAMS in the future. The Republic of Korea considered that those measures were in violation of articles 6 and 11 of the Anti-Dumping Agreement. On 6 November 1997, the Republic of Korea requested the establishment of a panel. At its meeting on 16 January 1998, the Dispute Settlement Body established a panel. The panel found the measures complained of to be in violation of article 11.2 of the Anti-Dumping Agreement. The report of the panel was circulated on 29 January 1999. At its meeting on 19 March 1999, the Dispute Settlement Body adopted the panel report.

Republic of Korea—Taxes on Alcoholic Beverages, complaint by the European Communities and the United States (WT/DS75 and WT/DS84). This request, dated 4 April 1997, was in respect of internal taxes imposed by the Republic of Korea on certain alcoholic beverages pursuant to its Liquor Tax Law and Education Tax Law. The European Communities argued that the Korean Liquor Tax Law and Education Tax Law appeared to be inconsistent with the Republic of Korea's obligations under article III:2 of GATT 1994. On 10 September 1997, the European Communities requested the establishment of panel. At its meeting on 16 October 1997, the Dispute Settlement Body established a panel, which would also examine a parallel complaint by the United States (WT/DS84/1). Canada and Mexico reserved their third-party rights. The panel found that soju (both diluted and distilled), was directly competitive and substitutable with the imported distilled alcoholic beverages that were in issue, namely, whisky, brandy, rum, gin, vodka, tequila, liqueurs and admixtures. The panel also found that the Republic of Korea had taxed the imported products in a dissimilar manner and that the tax differential was more than *de minimis*, and was applied so as to afford protection to domestic production. The panel therefore concluded that the Republic of Korea had violated article III:2 of GATT 1994. The report of the panel (which also covered DS84 below) was circulated to members on 17 September 1998. On 20 October 1998, the Republic of Korea notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body upheld the panel's findings on all points. The report of the Appellate Body was circulated to members on 18 January 1999. The Dispute Settlement Body adopted the panel and Appellate Body reports on 17 February 1999.

(iv) *Panel reports pending before the Appellate Body*

United States—Tax Treatment for "Foreign Sales Corporations" (WT/DS108/1), complaint by the European Communities. This request, dated 18 November 1997, was in respect of sections 921 to 927 of the United States Internal Revenue Code and related measures, establishing special tax treatment for "Foreign Sales Corporations" (FSC). The European Communities contended that those provisions were inconsistent with United States obligations under articles III:4 and XVI of GATT 1994, articles 3.1(*a*) and (*b*) of the Subsidies Agreement and articles 3

and 8 of the Agreement on Agriculture. On 1 July 1998, the European Communities requested the establishment of a panel. In its request, the European Communities invoked article 3.1(*a*) and (*b*) of the Subsidies Agreement and articles 3 and 8, 9 and 10 of the Agreement on Agriculture and did not pursue the claims under GATT 1994. At its meeting on 22 September 1998, the Dispute Settlement Body established a panel. Barbados, Canada and Japan reserved their rights as third parties to the dispute. The panel found that, through the FSC scheme, the United States had acted inconsistently with its obligations under article 3.1(*a*) of the Subsidies Agreement as well as with its obligations under article 3.3 of the Agreement on Agriculture (and, consequently, with its obligations under article 8 of that Agreement). The report of the panel was circulated to members on 8 October 1999. On 28 October 1999, the United States notified its intention to appeal certain issues of law and legal interpretations developed by the panel. On 2 November 1999, the United States withdrew its notice of appeal pursuant to rule 30 of the Working Procedures for Appellate Review, stating that the withdrawal was conditional on its right to file a new notice of appeal pursuant to rule 20 of the Working Procedures. On 26 November 1999, the United States notified its intention to appeal certain issues of law and legal interpretations developed by the panel.

(v) *Active panels*

The following table lists those panels that were still active as at 31 December 1999:

Dispute	*Complainant*	*Panel establishment*
European Communities—Measures Affecting the Prohibition of Asbestos and Asbestos Products (WT/DS135)	Canada	25 November 1998
Republic of Korea—Measures Affecting Imports of Fresh, Chilled and Frozen Beef (WT/DS161 andWT/DS/169)	United States Australia	26 May 1999– 26 July 1999– complaint to be examined by the same panel
United States—Section 100(5) of the United States Copyright Act (WT/DS/160)	European Communities	26 May 1999
United States—Import Measures on Certain Products from the European Communities (WT/DS/165)	European Communities	16 June 1999
Australia—Measures Affecting the Importation of Salmonids (WT/DS21)	United States	16 June 1999
Argentina—Measures on the Export of Bovine Hides and the Import of Bovine Leather (WT/DS155)	European Communities	26 July 1999
United States—Anti-Dumping Act of 1916 (II) (WT/DS166)	European Communities	26 July 1999
Argentina—Measures Affecting Imports of Footwear (WT/DS164)	United States	26 July 1999
Guatemala—Definitive Anti-dumping Measure regarding Grey Portland Cement from Mexico	Mexico	22 September 1999

Dispute	*Complainant*	*Panel establishment*
European Communities—Anti-Dumping Duties on Imports of Cotton-Type Bed Linen (WT/DS141)	India	27 October 1999
United States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand (WT/DS177 and WT/DS178)	New Zealand Australia	19 November 1999
Thailand—Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel; H-Beams from Poland (WT/DS122)	Poland	19 November 1999
United States—Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from the Republic of Korea (WT/DS179)	Republic of Korea	19 November 1999

(vi) *Requests for consultations*

The following list does not include disputes where a panel was either requested or established in 1999:

Dispute	*Complainant*	*Date of request*
European Communities—Regime for the Importation, Sale and Distribution of Bananas II	Guatemala Honduras Mexico Panama United States	20 January 1999
Hungary—Safeguard Measure on Imports of Steel Products from the Czech Republic (WT/DS159)	Czech Republic	21 January 1999
United States—Countervailing Duty Investigation with respect to Live Cattle from Canada (WT/DS167)	Canada	19 March 1999
South Africa—Anti-Dumping Duties on the Import of Certain Pharmaceutical Products from India (WT/DS168)	India	1 April 1999
Argentina—Patent Protection for Pharmaceuticals and Test Data Protection for Agricultural Chemicals (WT/DS171)	United States	6 May 1999
European Communities—Measures relating to the Development of a Flight Management System (WT/DS172)	United States	21 May 1999
France—Measures relating to the Development of a Flight Management System (WT/DS173)	United States	21 May 1999
India—Measures relating to Trade and Investment in the Motor Industry Sector (WT/DS175)	United States	21 May 1999
European Communities—Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs (WT/DS174)	United States	1 June 1999
United States—Section 211 Omnibus Appropriations Act (WT/DS176)	European Communities	8 July 1999

Dispute	*Complainant*	*Date of request*
United States—Rectification of Certain Sugar Syrups (WT/DS180)	Canada	6 September 1999
Ecuador—Provisional Anti-Dumping Measure on Cement from Mexico (WT/DS182)	Mexico	5 October 1999
Brazil—Measures on Import Licensing and Minimum Import Prices (WT/DS183)	European Communities	14 October 1999
United States—Anti-Dumping Measures affecting Certain Hot-Rolled Steel Products from Japan (WT/DS184)	Japan	18 November 1999
Trinidad and Tobago—Certain Measures affecting Imports of Pasta from Costa Rica (WT/DS185)	Costa Rica	18 November 1999

(vii) *Notification of a mutually agreed solution*

Dispute	*Complainant*	*Date settlement notified*
European Communities—Measures affecting Butter Products (WT/DS72)	New Zealand	11 November 1999

(*e*) Trade in services

Entry into force of the Fifth Protocol

By the deadline of 29 January 1999, the Fifth Protocol, containing the commitments assumed in the negotiations on financial services in December 1997, had been accepted by 53 out of 71 participating members. For all the accepting members, the Protocol entered into force on 1 March 1999, while the Services Council agreed that it should remain open for acceptance by those members who had not yet done so from 15 February until 15 June 1999 (five members accepted within that time period).

At the meeting held on 21 September 1999, following a request from Costa Rica and Nicaragua, the Council adopted a decision to reopen the Fifth Protocol for acceptance by those two members (S/L/76). Members welcomed as a positive development the fact that Costa Rica and Nicaragua could accept the Fifth Protocol, but stressed that deadlines had an important function and that they must be observed. They agreed that the reopening in that case was an exceptional and ad hoc procedure.

At the meeting held on 18 October 1999, the Services Council reviewed the status of acceptances of the Fifth Protocol: 10 out of 71 participating members were yet to accept. Some delegations expressed concern and disappointment about the status of acceptances of the Fifth Protocol and stressed the importance of full and immediate implementation of WTO obligations by members. Members who had not yet accepted the Fifth Protocol were invited to provide an update of the reasons for such a delay.

12. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Legislative assistance activities

During 1999 and 2000, legislative assistance continued to be provided to member States to enable them to further develop their nuclear legislation. Emphasis was placed on the interaction between technical and legal experts of the Agency and those of member States. In particular, assistance was given to 17 countries by means of written comments or advice on specific national legislation submitted to the Agency for review.

The Agency's legislative assistance activities in 1999 also included:

—Two training workshops for the countries of the Asia and Pacific region, with the participation of representatives from Bangladesh, China, India, Indonesia, Malaysia, Mongolia, Myanmar, Pakistan, Philippines, the Republic of Korea, Singapore, Sri Lanka, Thailand and Viet Nam. In particular, at the training workshop held in Vienna from 22 to 26 November 1999, topics related to liability for nuclear damage and emergency preparedness were addressed.

—Training of individuals on nuclear legislation continued to be provided through the Agency's technical cooperation programme. Individual training sessions on nuclear legal issues for lawyers and technical experts were carried out at the Legal Division. Individual training was given at the request of four member States, namely, Ghana, the Republic of Moldova, Slovakia and Tunisia.

(*b*) Status of legal agreements

Agreement on the Privileges and Immunities of the International Atomic Energy Agency[249]

During 1999, the status of the Agreement remained unchanged, with 66 parties.

Convention on the Physical Protection of Nuclear Material[250]

In 1999, Panama adhered to the Convention. By the end of the year, there were 64 parties.

Convention on Early Notification of a Nuclear Accident[251]

In 1999, Belgium and Panama adhered to the Convention. By the end of the year, there were 84 parties.

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency[252]

In 1999, Belgium and Panama adhered to the Convention. By the end of the year, there were 79 parties.

Vienna Convention on Civil Liability for Nuclear Damage, 1963[253]

In 1999, Uruguay adhered to the Convention. By the end of the year, there were 32 parties.

Optional Protocol concerning the Compulsory Settlement of Disputes[254]

In 1999, Uruguay acceded to the Protocol. By the end of the year, there were 2 parties.

Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention[255]

During 1999, the status of the Protocol remained unchanged, with 20 parties.

Convention on Nuclear Safety[256]

In 1999, Cyprus, Sri Lanka and the United States of America adhered to the Convention. By the end of the year, there were 52 parties.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management[257]

In 1999, Croatia, the Czech Republic, Denmark, Morocco, Romania, Slovenia, Spain and Sweden adhered to the Convention. By the end of the year, there were 13 Contracting States and 40 signatories.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage[258]

In 1999, Morocco adhered to the Protocol. By the end of the year, there were two Contracting States and 14 signatories.

Convention on Supplementary Compensation for Nuclear Damage[259]

In 1999, Morocco and Romania adhered to the Convention. By the end of the year, there were 2 Contracting States and 13 signatories.

African Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology[260] *(AFRA)—First Extension*

In 1999, Burkina Faso and Côte d'Ivoire adhered to the Agreement. By the end of the year, there were 26 parties.

Second Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology, 1987[261] *(RCA)*

During 1999, the status of the Agreement remained unchanged, with 17 parties.

Revised Supplementary Agreement concerning the Provision of Technical Assistance by the International Atomic Energy Agency (RSA)

In 1999, Latvia concluded the Agreement. By the end of the year, there were 89 States that had concluded RSA Agreement.

Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)

In 1999, Brazil and Mexico signed the Agreement. By the end of the year, there were 14 signatories.

(*c*) Convention on Nuclear Safety

The first Review Meeting of Contracting Parties under the Convention was held at Vienna in April 1999. Each Contracting Party was required to submit in ad-

vance a national report describing the measures it had taken to meet its obligations under the Convention. During the two-week Review Meeting, the Contracting Parties reviewed each national report, along with questions and comments that had been submitted. This detailed review was carried out in six parallel "country groups", with a Rapporteur from each group reporting to the final plenary session on the results of the discussions. A consensus summary report was adopted by the Review Meeting, outlining the main conclusions from the discussions and the issues identified as being important for future progress in improving nuclear safety.

The Contracting Parties agreed that the review process had been of great value to their national nuclear safety programmes, referring not only to the "peer review" by other Contracting Parties and the very open discussions at the Review Meeting, but also to the self-assessment involved in producing the national reports. They concluded that the review process had demonstrated the strong commitment by all Contracting Parties to the safety objectives of the Convention. Although there were variations among Contracting Parties with regard to the levels from which they started implementation of Convention obligations and in the resources available for improvement programmes, it was noted that all Contracting Parties participating in the Meeting were taking steps in the right direction.

(*d*) Safeguards Agreements

During 1999, a Safeguards Agreement pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons entered into force with Azerbaijan.[262] A Safeguards Agreement pursuant to the Non-Proliferation Treaty and the South-East Asia Nuclear-Weapon-Free Zone Treaty entered into force with Cambodia.[263] Two Safeguards Agreements pursuant to the Non-Proliferation Treaty, were signed with Kuwait and Slovakia, and a Safeguards Agreement with Oman was approved by the IAEA Board of Governors. These agreements have not yet entered into force.

Through an exchange of letters between Brazil and the Agency,[264] it was confirmed that the safeguards agreement concluded between Argentina, Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials and IAEA (INFCIRC/435) satisfied the obligations of Brazil under the Non-Proliferation Treaty and the Treaty of Tlatelolco to conclude a comprehensive Safeguards Agreement.

A protocol[265] suspending the application of safeguards in Brazil pursuant to the Agreement of 26 February 1976 between IAEA, Brazil and Germany in the light of the Safeguards Agreement between Argentina, Brazil, the Brazilian-Argentine Agency for the Accounting and Control of Nuclear Materials and the IAEA (INFCIRC/435) entered into force. The application of safeguards in Brazil under the Agreement between IAEA, Brazil and Germany will be suspended so long as the agreement set out in INFCIRC/435 is in force.

Protocols Additional to the Safeguards Agreements between IAEA and Indonesia,[266] Japan[267] and Monaco[268] entered into force. Protocols Additional to Safeguards Agreements were signed by Cuba, Cyprus, the Czech Republic, Ecuador, Norway, the Republic of Korea, Romania and Slovakia, but have not entered into force. A Protocol Additional to the Safeguards Agreement between IAEA and Peru was also approved by the IAEA Board of Governors.

By the end of 1999, there were 224 Safeguards Agreements in force with 140 States, (and Taiwan Province of China). Safeguards Agreements which satisfy the

requirements of the Non-Proliferation Treaty were in force with 128 States. By the end of 1999, 46 States had concluded an Additional Protocol, eight of which had entered into force, and one of which was being implemented provisionally pending its entry into force.

NOTES

[1] For detailed information, see *The Disarmament Yearbook*, vol. 24: 1999 (United Nations publication, Sales No. 00.IX.1).

[2] The bilateral negotiations known as strategic arms reduction talks (START), conducted by the Russian Federation and the United States of America, led to the signing of two treaties: START I and START II. The former, signed on 31 July 1991, provides for a significant reduction of the Russian and United States strategic nuclear weapons over seven years. A letter signed on 3 January 1993 provides, inter alia, for the reduction of strategic nuclear warheads to no more than 3,000 to 3,500 each by 2003.

[3] This agreement would lower the number of deployed strategic warheads permitted each nation to 2,000 from 2,500 by the end of 2007.

[4] United Nations, *Treaty Series*, vol. 729, p. 159.

[5] INFCIRC/540 (Corrected).

[6] Australia, Holy See, Indonesia, Japan, Jordan, Monaco, New Zealand and Uzbekistan.

[7] Resolution GC(43)RES/18.

[8] Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996.

[9] See also sections A.8(*i*) and (*j*) of the present chapter.

[10] Resolutions GC(43)/RES/10, GC(43)/RES/11 and GC(43)/RES/12.

[11] United Nations, *Treaty Series*, vol. 1963, p. 293.

[12] 1996 Treaty: A/50/1027, annex.

[13] 1972 Treaty: United Nations, *Treaty Series*, vol. 944, p. 13.

[14] 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.

[15] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction: see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 27*, appendix I.

[16] See S/PV.4048.

[17] Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction: see CD/1478.

[18] CCW/CONF.I/16 (Part I), annex B.

[19] 1980 Convention: United Nations, *Treaty Series*, vol. 1342, p. 137.

[20] General Assembly resolution 2734 (XXV).

[21] Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean: United Nations, *Treaty Series*, vol. 634, p. 281.

[22] African Nuclear-Weapon-Free Zone Treaty: see A/50/26, annex; *International Legal Materials*, vol. 35, p. 698.

[23] *International Legal Materials*, vol. 35, p. 635.

[24] Ibid.

[25] These principles are reproduced as annexes I and II to Security Council resolution 1244 (1999) of 10 June 1999.

[26] *International Legal Materials*, vol. 30, No. 1, p. 6 (1991).

[27] For the text of the Adaptation Agreement, see White House Fact Sheet, 19 November 1999.

[28] For the text of the Final Act, see CFE.DOC/2/99.

[29] For the text, see OSCE document FSC.DOC/1/99.

[30] The first document on confidence- and security-building measures was adopted in 1986 (the Stockholm Document); and two followed: the Vienna Document of 1990 and the Vienna Document of 1994.

[31] A/54/374, annex.

[32] For the report of the Subcommittee, see A/AC.105/721.

[33] A/AC.105/C.2/L.205.

[34] A/AC.105/C.2/1997/CRP.3/Rev.1.

[35] A/AC.105/C.2/L.200 and Corr.1.

[36] 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 (resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

[37] A/CONF.184/PC/1.

[38] See A/AC.105/C.2/1999/CRP.7/Rev.1.

[39] For the report of the Committee, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 20* (A/54/20).

[40] A/AC.105/721, annex IV, sect. A.

[41] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 20* (A/54/20), annex I, sect. B.

[42] A/CONF.184/6.

[43] Ibid., chap. I, resolution 1.

[44] A/54/87.

[45] For the report of the Governing Council, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 25* (A/54/25 and Add.1).

[46] Governing Council decision 17/25, annex.

[47] UNEP/GC.20/INF/16.

[48] UNEP/GC.20/INF/17.

[49] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

[50] General Assembly resolution S-19/2, annex.

[51] See UNEP/CBP/COP/4/27, annex.

[52] See *Legal Instruments Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15 April 1994* (GATT secretariat publication, Sales No. GATT/1994-7).

[53] FCCC/CP/1997/L.7/Add.1, decision 1/CP.3; *International Legal Materials*, vol. 37 (1998), p. 22.

[54] A/AC.237/18 (Part II)/Add.1 and Corr.1, annex I.

[55] For the text of the Convention, see A/49/84/Add.2, annex, appendix II.

[56] A/54/442.

[57] A/54/471.

[58] A/54/512/Add.1.

[59] See www.un.org/esa/coordination/ecesa/eces99-1.htm.

[60] United Nations publication, Sales No. E.99.II.C.1.

[61] United Nations publication, Sales No. E.99.II.D.1.

[62] A/54/304.

[63] A/54/486.

[64] A/54/370.

[65] A/54/389.

[66] General Assembly resolution 46/141, annex.

[67] See *Report of the Second United Nations Conference on the Least Developed Countries, Paris, 3-14 September 1990* (A/CONF.147.18), part one.

[68] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 39* (A/54/39).

[69] Ibid., annex I.

[70] E/CN.15/1996/6 and Corr.1.

[71] A/AC.254/11.

[72] A/AC.254/13-E/CN.15/1999/5.

[73] See A/53/78, annex.

[74] E/CN.15/1990/10, paras. 1-4.

[75] E/CN.15/1999/WP.1/Add.1.

[76] A/54/69-E/1000/8 and Add.1.

[77] United Nations, *Treaty Series*, vol. 520, p. 151.

[78] Ibid., vol. 1019, p. 175.

[79] Ibid., vol. 976, p. 3.

[80] Ibid., p. 105.

[81] E/CONF.82/15 and Corr.2.

[82] United Nations, *Treaty Series*, vol. 993, p. 3.

[83] Ibid., vol. 999, p. 171.

[84] Ibid., p. 171.

[85] General Assembly resolution 44/128.

[86] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 40* (A/54/40).

[87] Ibid., *Fifty-first Session, Supplement No. 40* (A/51/40), vol. I, annex V.

[88] Ibid., *Fifty-third Session, Supplement No. 40* (A/53/40), vol. I, annex VII.

[89] *Official Records of the Economic and Social Council, 1998, Supplement No. 2* (E/1998/22).

[90] Ibid., *1999, Supplement No. 2* (E/1999/22)

[91] Ibid., *1998, Supplement No. 2* (E/1998/22), annex V.

[92] Ibid., *1999, Supplement No. 2* (E/1999/22), annex IV.

[93] Ibid., annex V.

[94] E/C.12/1999/4.

[95] E/C.12/1999/5.

[96] United Nations, *Treaty Series*, vol. 660, p. 195.

[97] See CERD/SP/45.

[98] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 18* (A/54/18).

[99] A/54/299.

[100] United Nations, *Treaty Series*, vol. 1015, p. 243.

[101] Ibid., vol. 1249, p. 13.

[102] CEDAW/SP/1995/2.

[103] General Assembly resolution 54/4; see chap. IV.A of the present volume.

[104] A/54/224 and Corr.1.

[105] A/54/225.

[106] *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.

[107] United Nations, *Treaty Series*, vol. 1465, p. 85.

[108] CAT/SP/1992/L.1.

[109] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44).

[110] United Nations, *Treaty Series*, vol. 1577, p. 3.

[111] CRC/SP/1995/L.1/Rev.1.

[112] A/54/265.

[113] See A/54/411.

[114] General Assembly resolution 45/158, annex.

[115] A/54/346.

[116] See *Official Records of the Economic and Social Council, 1999, Supplement No. 3* (E/1999/23), chap. II, sect. A.

[117] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 36* (A/54/36).

[118] Economic and Social Council resolution 1997/30, annex.

[119] A/54/439.

[120] The Sub-Commission on Prevention of Discrimination and Protection of Minorities was renamed the Sub-Commission on the Promotion and Protection of Human Rights pursuant to Economic and Social Council decision 1999/256 of 27 July 1999.

[121] United Nations, *Treaty Series*, vol. 189, p. 137.

[122] Ibid., vol. 606, p. 267.

[123] Ibid., vol. 360, p. 117.

[124] Ibid., vol. 989, p. 175.

[125] For detailed information, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 12* (A/54/12) and ibid., *Supplement No. 12A* (A/54/12/Add.1).

[126] E/1999/97.

[127] E/1999/76.

[128] E/1999/112.

[129] A/54/286.

[130] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 12* (A/54/12).

[131] A/54/285.

[132] A/54/430, annex.

[133] A/54/414.

[134] *Official Records of the General Assembly, Fifth-fourth Session, Supplement No. 12* (A/54/12).

[135] See A/54/409.

[136] Roberta Cohen and Frances M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, D.C., Brookings Institution Press, 1998).

[137] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 3* (A/54/3/Rev.1), chap. VI, para. 5.

[138] A/54/217.

[139] A/54/187.

[140] A/54/315.

[141] A/54/154/Add.1-E/1999/94/Add.1.

[142] General Assembly resolution 49/59, annex.

[143] A/54/619 and S/1999/957; see *Official Records of the Security Council, Fifty-fourth Year, Supplement for July, August and September 1999*, document S/1999/957.

[144] See S/PV.4046, S/PV.4046 (Resumption 1) and Corr.2 and S/PV.4046 (Resumption 2). For the final text, see *Official Records of the Security Council, Fifty-fourth Year*, 4046th meeting.

[145] See S/PV.3977 and S/PV.3978. For the final text, see *Official Records of the Security Council, Fifty-fourth Year*, 3977th and 3978th meetings.

[146] United Nations, *Treaty Series*, vol. 249, p. 240.

[147] United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Sixteenth Session, Paris, 12 October–14 November 1970*, vol. 1: *Resolutions*, p. 135.

[148] See www.unidroit.org.

[149] A/54/436.

[150] For the text of the Second Protocol, see chap. IV.B of the present volume.

[151] 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).

[152] A/54/429 and Corr.1.

[153] See also the annual report of the Tribunal for 1999, SPLOS/50.

[154] General Assembly resolution 48/263, annex.

[155] ISBA/3/A/L.3, annex.

[156] SPLOS/25.

[157] ISBA/4/A/8, annex.

[158] United Nations, *Treaty Series*, vol. 1046, p. 120.

[159] IMO/LC.2/Cir.380.

[160] IMO publication, Sales No. 462.88.12E.

[161] *International Fisheries Instruments* (United Nations publication, Sales No. E.98. V.11), sect. I; see also A/CONF.164/37.

[162] *International Fisheries Instruments* (United Nations publication, Sales No. E.98. V.11), sect. II.

[163] See *Official Records of the Economic and Social Council, 1999, Supplement No. 9* (E/1999/29), chap. I, sect. C, decision 7/1, paras. 37-45.

[164] For the composition of the Court, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 4* (A/54/4), chap. I. See also General Assembly decision 54/310 of 3 November 1999. As at 31 December 1999, 60 States had made declarations recognizing the jurisdiction of the Court as compulsory, in accordance with declarations filed under Article 36, paragraph 2, of the Statute of the International Court of Justice.

[165] For detailed information, see *I.C.J. Yearbook 1998-1999, No. 53*, and *I.C.J. Yearbook 1999-2000, No. 54*.

[166] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 4* (A/54/4).

[167] For the membership of the Commission, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), chap. I, sect. A.

[168] For detailed information, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10 and Corr.1 and 2).

[169] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2).

[170] See A/C.6/54/L.12; see also *Official Records of the General Assembly, Fifty-fourth Session, Sixth Committee*, 30th meeting (A/C.6/54/SR.30), and corrigendum.

[171] A/54/266.

[172] For the membership of the Commission, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17* (A/54/17), chap. I, sect. B.

[173] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXX: 1999 (United Nations publication, Sales No. 00.V.9).

[174] A/CN.9/458/Add.1-9.

[175] A/CN.9/452 and 457.

[176] A/CN.9/446, para. 212.

[177] A/CN.9/455 and 456.

[178] For the text of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, see United Nations, *Treaty Series*, vol. 330, p. 3.

[179] A/CN.9/460.

[180] A/CN.9/462/Add.1.

[181] The secretariat of UNCITRAL publishes court decisions and arbitral awards relevant to the interpretation or application of a text resulting from the work of the Commission. For a description of CLOUT, see the Users Guide (A/CN.9/SER.C/GUIDE), published in 1993. A/CN.9/SER.C/ABSTRACTS may be accessed through the UNCITRAL home page: www.uncitral.org.

[182] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17* (A/54/17).

[183] A/C.6/54/L.13/Rev.1.

[184] A/54/381, annex.

[185] A/54/362 and Add.1.

[186] A/54/515.

[187] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 26* (A/54/26).

[188] A/CONF.183/9.

[189] Ibid., annex I.

[190] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1).

[191] A/54/383.

[192] S/1999/92; see *Resolutions and Decisions of the Security Council, 1999.*

[193] A/53/312.

[194] See A/53/326 and Corr.1 and Add.1.

[195] For the text of the Convention, see chap. IV.A of the present volume.

[196] A/54/301 and Add.1.

[197] United Nations, *Treaty Series*, vol. 704, p. 219.

[198] Ibid., vol. 860, p. 105.

[199] Ibid., vol. 974, p. 177.

[200] Ibid., vol. 1035, p. 167.

[201] Resolution 34/146, annex.

[202] United Nations, *Treaty Series*, vol. 1456, p. 104.

[203] ICAO document DOC 9518.

[204] IMO document SUA/CONF/15/Rev.1.

[205] IMO document SUA/CONF/16/Rev.2.

[206] S/22393, annex I; see *Official Records of the Security Council, Forty-sixth year, Supplement for January, February and March 1991.*

[207] General Assembly resolution 52/164, annex.

[208] For detailed information, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 14* (A/55/14). The report covers the period from 1 July 1998 to 30 June 2000.

[209] ILO, *Official Bulletin*, vol. LXXXII, 1999, Series A, No. 2, pp. 83-90. ILC, 87th session, Geneva, 1999, *Record of Proceedings*, vol. II, pp. 1-17. Information on the preparatory work for the adoption of these instruments is given in order to facilitate reference work. These instruments have been adopted using the *double discussion* procedure. *First discussion*: *Child Labour: Targeting the intolerable*, ILC, 86th session, Geneva, 1998, Reports VI (1) and (2); ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. I, No. 19 and No. 22, pp. 29-39; *Second discussion*: *Child Labour*, ILC, 87th session, Geneva, 1999, Report IV (1) and Reports IV (2A and 2B); ILC, 87th session, Geneva, 1999, *Record of Proceedings*, vol. I, No. 19, No. 19 (Corr.), No. 19A, No. 19B, No. 26, No. 27 (Rev.), pp. 20-28. For the text of the Convention, see chap. IV.B of the present volume.

[210] ILO, *Official Bulletin*, vol. LXXXII, 1999, Series A, No. 2, p. 105; ILC, 87th session, Geneva, 1999, *Record of Proceedings*, vol. I, No. 1, No. 17 and No. 21, p. 20.

[211] ILO, *Official Bulletin*, vol. LXXXII, 1999, Series A, No. 2, pp. 91-92; ILC, 87th session, Geneva, 1999, *Record of Proceedings*, vol. I, No. 3, pp. 95-101, No. 16 and No. 27 (Rev.), pp. 5-19, and vol. II, pp. 21-22.

[212] ILO, *Official Bulletin*, vol. LXXXII, 1999, Series A, No. 2, pp. 102-103; ILC, 87th session, Geneva, 1999, *Record of Proceedings*, vol. II, p. 32-33, and vol. I, No. 21, p. 2.

[213] The report has been published as Report III (Part 1) to the 88th session of the Conference (2000) and comprises two volumes: vol. 1A, *General Report and Observations concerning particular countries* (Report III (Part 1A)); and vol. 1B, *General Survey concerning the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and the Tripartite Consultation (Activities of the International Labour Organization) Recommendation*, 1976 (No. 152) (Report III (Part 1B)).

[214] GB.275/8/3.

[215] GB.276/17/1.

[216] GB.276/17/2.

[217] ILO, *Official Bulletin*, vol. LXXXII, 1999, Series B, No. 1.

[218] Ibid., vol. LXXXII, 1999, Series B, No. 2.

[219] Ibid., vol. LXXXII, 1999, Series B, No. 3.

[220] GB.274/WP/SDL/1 and 2.

[221] GB.276/WP/SDL/1 and Add.1.

[222] GB.274/LILS/WP/PRS/1-3 and 4 (Rev.1), GB.274/10/2 and Corr.

[223] GB.276/LILS/WP/PRS/1-4 and 5 (Rev.1), GB.276/10/2.

[224] ILO, *Official Bulletin*, Series A, No. 1, 1999, pp. 41-43; for the text of the Agreement, see chap. II.B of the present volume.

[225] Ibid., Series A, No. 3, 1999, pp. 79-82; for the text of the Memorandum of Understanding, see chap. II.B of the present volume.

[226] For the text of the Protocol, see chap. IV.B of the present volume.

[227] www.itu.int/acc/rtc/acc-rep.htm.

[228] See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 3* (A/55/3/Rev.1), chap. III, para. 17.

[229] UNESCO Constitution, sixth preambular para.

[230] Ibid., article I, para. 2 (*a*).

[231] ILO/UNESCO/WIPO/ICR.17/6.

[232] 1999 Protocol: Economic and Social Council document MP.WAT/AC.1/1999/1; 1992 Convention: United Nations, *Treaty Series*, vol. 1302, p. 217.

[233] For the text of the Agreement, see chap. II.B of the present volume.

[234] For the text of the Agreement, see chap. II.B of the present volume.

[235] A/FCTC/WG1/6.

[236] As well as promoting the transfer of environmentally sound and socially acceptable technology, and reducing local pollution.

[237] For a brief account of the first review of the Panel's experience, see *Juridical Yearbook 1996*, pp. 226-227.

[238] For an account of the process, as well as the text of the conclusions of the Executive Director's second review, see Ibrahim F. I. Shihata, *The World Bank Inspection Panel: In Practice*, 2nd ed., Oxford University Press, 2000, pp. 173-203 and 323-328. The conclusions are also published in World Bank Inspection Panel, *Annual Report August 1, 1998 to July 31, 1999*, published for the Inspection Panel by the World Bank, Washington, D.C., 2000, pp. 50-53.

[239] For further information on these requests and on requests submitted earlier, see the publications of the Inspection Panel, e. g., *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.

[240] United Nations, *Treaty Series*, vol. 1508, p. 100.

[241] Convention on the settlement of investment disputes between States and nationals of other State: United Nations, *Treaty Series*, vol. 575, p. 159.

[242] United Nations, *Treaty Series*, vol. 15, p. 295.

[243] ICAO document 9208.

[244] ICAO document 9217.

[245] For the text of the Convention, see chap. IV.B of the present volume.

[246] The report of the sessions of the Legal Committee held during 1999 is contained in documents LEG 79/11 and LEG 80/11.

[247] See also chap. II.B of the present volume.

[248] Marrakesh Agreement establishing the World Trade Organization. United Nations *Treaty Series*, vol. 1867, p. 3.

[249] INFCIRC/9/Rev.2; see also United Nations, *Treaty Series*, vol. 374, p. 147.

[250] INFCIRC/274/Rev.1; see also United Nations, *Treaty Series*, vol. 1456, p. 123.

[251] INFCIRC/335; see also United Nations, *Treaty Series*, vol. 1439, p. 275.

[252] INFCIRC/336; see also United Nations, *Treaty Series*, vol. 1457, p. 133.

[253] INFCIRC/500; see also United Nations, *Treaty Series*, vol. 1063, p. 265.

[254] INFCIRC/500/Add.3.

[255] INFCIRC/402; see also United Nations, *Treaty Series*, vol. 1672, p. 301.

[256] INFCIRC/449.

[257] INFCIRC/546.

[258] INFCIRC/566.

[259] INFCIRC/567.

[260] INFCIRC/377.

[261] INFCIRC/167/Add.18.

[262] INFCIRC/580.

[263] INFCIRC/586.

[264] For the text of the exchange of letters, see chap. II.B of the present volume.

[265] INFCIRC/237/Add.1.

[266] INFCIRC/283/Add.1; see chap. II.B of this volume for the text of the Protocol.

[267] INFCIRC/255/Add.1.

[268] INFCIRC/524/Add.1.

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. OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN.[1] DONE AT NEW YORK ON 6 OCTOBER 1999[2]

The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention"), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

Article 1

A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article 2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where

a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The Committee shall declare a communication inadmissible where:

(*a*) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(*b*) It is incompatible with the provisions of the Convention;

(*c*) It is manifestly ill-founded or not sufficiently substantiated;

(*d*) It is an abuse of the right to submit a communication;

(*e*) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of indi-

viduals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 8

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.

2. The Committee may, if necessary, at the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.

2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 12

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

Article 13

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

Article 14

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

Article 15

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.

2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 16

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a re-

quest that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 19

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

The Secretary-General of the United Nations shall inform all States of:

(*a*) Signatures, ratifications and accessions under the present Protocol;

(*b*) The date of entry into force of the present Protocol and of any amendment under article 18;

(*c*) Any denunciation under article 19.

Article 21

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.

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2. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM.[3] DONE AT NEW YORK ON 9 DECEMBER 1999[4]

Preamble

The States Parties to this Convention,

Bearing 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, contained in General Assembly resolution 50/6 of 24 October 1995,

Recalling also all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and the annex thereto on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed 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 on Measures to Eliminate International Terrorism 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 paragraph 3 (*f*) of General Assembly resolution 51/210 of 17 December 1996, in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (*a*) to (*f*) of its resolution 51/210,

Recalling further General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

Noting also that existing multilateral legal instruments do not expressly address such financing,

Being convinced of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

2. "State or government facility" means 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.

3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(*a*) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(*b*) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2. (*a*) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (*a*). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(*b*) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (*a*) or (*b*).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(*a*) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(*b*) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(*c*) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 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 as set forth in article 2;

(*b*) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence as set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals who have committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

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;

(*b*) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;

(*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 was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (*a*) or (*b*), in the territory of or against a national of that State;

(*b*) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (*a*) or (*b*), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;

(*c*) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (*a*) or (*b*), committed in an attempt to compel that State to do or abstain from doing any act;

(*d*) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;

(*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. 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 that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (*a*) or (*b*), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence 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:

(*a*) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(*b*) To be visited by a representative of that State;

(*c*) To be informed of that person's rights under subparagraphs (*a*) and (*b*).

4. The rights referred to in paragraph 3 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 7, paragraph 1, subparagraph (*b*), or paragraph 2, subparagraph (*b*), 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 7, paragraph 1 or 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 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was com-

mitted 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 11

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 7, 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 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange 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 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

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 15

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 16

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 identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

(*a*) The person freely gives his or her informed consent;

(*b*) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(*a*) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(*b*) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the

person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(*c*) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(*d*) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

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 human rights law.

Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(*a*) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(*b*) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts, the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(*a*) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(*b*) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(*a*) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(*b*) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

Article 19

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 20

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 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 23

1. The annex may be amended by the addition of relevant treaties:

(*a*) That are open to the participation of all States;

(*b*) That have entered into force;

(*c*) That have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties that have deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Article 24

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 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 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 26

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 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

ANNEX

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANIZATION

International Labour Organization Convention concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour.[5] Done at Geneva on 17 June 1999[6]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

Adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term "the worst forms of child labour" comprises:

(*a*) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(*b*) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(*c*) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(*d*) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4

1. The types of work referred to under article 3 (*d*) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular paragraphs 3 and 4 of the Worst Forms of Child Labour Convention, 1999.

2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

3. The list of the types of work determined under paragraph 1 of this article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention, including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(*a*) Prevent the engagement of children in the worst forms of child labour;

(*b*) Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

(*c*) Ensure access to free basic education and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

(*d*) Identify and reach out to children at special risk; and

(*e*) Take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance, including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office

for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, and acts of denunciation communicated by Members of the organization.

2. When notifying the Members of the organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with Article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(*a*) The ratification by a member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of article 11 above, if and when the new revising Convention shall have come into force;

(*b*) As from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

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2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.[7] Done at The Hague on 26 March 1999

The Parties,

Conscious of the need to improve the protection of cultural property in the event of armed conflict and to establish an enhanced system of protection for specifically designated cultural property;

Reaffirming the importance of the provisions of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954, and emphasizing the necessity to supplement these provisions through measures to reinforce their implementation;

Desiring to provide the High Contracting Parties to the Convention with a means of being more closely involved in the protection of cultural property in the event of armed conflict by establishing appropriate procedures therefor;

Considering that the rules governing the protection of cultural property in the event of armed conflict should reflect developments in international law;

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of this Protocol,

Have agreed as follows:

CHAPTER 1. INTRODUCTION

Article 1

DEFINITIONS

For the purposes of this Protocol:

(*a*) "Party" means a State Party to this Protocol;

(*b*) "cultural property" means cultural property as defined in article 1 of the Convention;

(*c*) "Convention" means the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954;

(*d*) "High Contracting Party" means a State Party to the Convention;

(*e*) "enhanced protection" means the system of enhanced protection established by articles 10 and 11;

(*f*) "military objective" means an object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage;

(*g*) "illicit" means under compulsion or otherwise in violation of the applicable rules of the domestic law of the occupied territory or of international law;

(*h*) "List" means the International List of Cultural Property under Enhanced Protection established in accordance with article 27, subparagraph 1 (*b*);

(*i*) "Director-General" means the Director-General of UNESCO;

(*j*) "UNESCO" means the United Nations Educational, Scientific and Cultural Organization;

(*k*) "First Protocol" means the Protocol for the Protection of Cultural Property in the Event of Armed Conflict done at The Hague on 14 May 1954.

Article 2

RELATION TO THE CONVENTION

This Protocol supplements the Convention in relations between the Parties.

Article 3

SCOPE OF APPLICATION

1. In addition to the provisions which shall apply in time of peace, this Protocol shall apply in situations referred to in article 18, paragraphs 1 and 2, of the Convention and in article 22, paragraph 1.

2. When one of the parties to an armed conflict is not bound by this Protocol, the Parties to this Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to a State party to the conflict which is not bound by it, if the latter accepts the provisions of this Protocol and so long as it applies them.

Article 4

RELATIONSHIP BETWEEN CHAPTER 3 AND OTHER PROVISIONS OF THE CONVENTION AND THIS PROTOCOL

The application of the provisions of Chapter 3 of this Protocol is without prejudice to:

(*a*) The application of the provisions of Chapter I of the Convention and of Chapter 2 of this Protocol;

(*b*) The application of the provisions of Chapter II of the Convention save that, as between Parties to this Protocol or as between a Party and a State which accepts and applies this Protocol in accordance with article 3, paragraph 2, where cultural property has been granted both special protection and enhanced protection, only the provisions of enhanced protection shall apply.

CHAPTER 2. GENERAL PROVISIONS REGARDING PROTECTION

Article 5

SAFEGUARDING OF CULTURAL PROPERTY

Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict pursuant to article 3 of the Convention shall include, as appropriate, the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.

Article 6

RESPECT FOR CULTURAL PROPERTY

With the goal of ensuring respect for cultural property in accordance with article 4 of the Convention:

(*a*) A waiver on the basis of imperative military necessity pursuant to article 4, paragraph 2, of the Convention may only be invoked to direct an act of hostility against cultural property when and for as long as:

(i) That cultural property has, by its function, been made into a military objective; and

(ii) There is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective;

(*b*) A waiver on the basis of imperative military necessity pursuant to article 4, paragraph 2, of the Convention may only be invoked to use cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage;

(*c*) The decision to invoke imperative military necessity shall only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise;

(*d*) In case of an attack based on a decision taken in accordance with subparagraph (*a*), an effective advance warning shall be given whenever circumstances permit.

Article 7

PRECAUTIONS IN ATTACK

Without prejudice to other precautions required by international humanitarian law in the conduct of military operations, each party to the conflict shall:

(*a*) Do everything feasible to verify that the objectives to be attacked are not cultural property protected under article 4 of the Convention;

(*b*) Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under article 4 of the Convention;

(*c*) Refrain from deciding to launch any attack which may be expected to cause incidental damage to cultural property protected under article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated; and

(*d*) Cancel or suspend an attack if it becomes apparent:

(i) That the objective is cultural property protected under article 4 of the Convention;

(ii) That the attack may be expected to cause incidental damage to cultural property protected under article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated.

Article 8

PRECAUTIONS AGAINST THE EFFECTS OF HOSTILITIES

The parties to the conflict shall, to the maximum extent feasible:

(*a*) Remove movable cultural property from the vicinity of military objectives or provide for adequate in situ protection;

(*b*) Avoid locating military objectives near cultural property.

Article 9

PROTECTION OF CULTURAL PROPERTY IN OCCUPIED TERRITORY

1. Without prejudice to the provisions of articles 4 and 5 of the Convention, a Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent, in relation to the occupied territory:

(*a*) Any illicit export, other removal or transfer of ownership of cultural property;

(*b*) Any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property;

(*c*) Any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

2. Any archaeological excavation of, alteration to or change of use of cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close cooperation with the competent national authorities of the occupied territory.

CHAPTER 3. ENHANCED PROTECTION

Article 10

ENHANCED PROTECTION

Cultural property may be placed under enhanced protection provided that it meets the following three conditions:

(*a*) It is cultural heritage of the greatest importance for humanity;

(*b*) It is protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection;

(*c*) It is not used for military purposes or to shield military sites and a declaration has been made by the Party which has control over the cultural property, confirming that it will not be so used.

Article 11

THE GRANTING OF ENHANCED PROTECTION

1. Each Party should submit to the Committee a list of cultural property for which it intends to request the granting of enhanced protection.

2. The Party which has jurisdiction or control over the cultural property may request that it be included in the list to be established in accordance with article 27, paragraph 1 (*b*). This request shall include all necessary information related to the criteria mentioned in article 10. The Committee may invite a Party to request that cultural property be included in the List.

3. Other Parties, the International Committee of the Blue Shield and other non-governmental organizations with relevant expertise may recommend specific cultural property to the Committee. In such cases, the Committee may decide to invite a Party to request inclusion of that cultural property in the List.

4. Neither the request for inclusion of cultural property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State, nor its inclusion, shall in any way prejudice the rights of the parties to the dispute.

5. Upon receipt of a request for inclusion in the List, the Committee shall inform all Parties of the request. Parties may submit representations regarding such a request to the Committee within sixty days. These representations shall be made only on the basis of the criteria mentioned in article 10. They shall be specific and related to facts. The Committee shall consider the representations, providing the Party requesting inclusion with a reasonable opportunity to respond before taking the decision. When such representations are before the Committee, decisions for inclusion in the List shall be taken, notwithstanding article 26, by a majority of four fifths of its members present and voting.

6. In deciding upon a request, the Committee should ask the advice of governmental and non-governmental organizations, as well as of individual experts.

7. A decision to grant or deny enhanced protection may only be made on the basis of the criteria mentioned in article 10.

8. In exceptional cases, when the Committee has concluded that the Party requesting inclusion of cultural property in the List cannot fulfil the criteria of article 10, subparagraph (*b*), the Committee may decide to grant enhanced protection, provided that the requesting Party submits a request for international assistance under article 32.

9. Upon the outbreak of hostilities, a party to the conflict may request, on an emergency basis, enhanced protection of cultural property under its jurisdiction or control by communicating this request to the Committee. The Committee shall transmit this request immediately to all parties to the conflict. In such cases the Committee will consider representations from the Parties concerned on an expedited basis. The decision to grant provisional enhanced protection shall be taken as soon as possible and, notwithstanding article 26, by a majority of four fifths of its members present and voting. Provisional enhanced protection may be granted by the Committee pending the outcome of the regular procedure for the granting of enhanced protection, provided that the provisions of article 10, subparagraphs (*a*) and (*c*), are met.

10. Enhanced protection shall be granted to cultural property by the Committee from the moment of its entry in the List.

11. The Director-General shall, without delay, send to the Secretary-General of the United Nations and to all Parties notification of any decision of the Committee to include cultural property on the List.

Article 12

IMMUNITY OF CULTURAL PROPERTY UNDER ENHANCED PROTECTION

The parties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property or its immediate surroundings in support of military action.

Article 13

LOSS OF ENHANCED PROTECTION

1. Cultural property under enhanced protection shall only lose such protection:

(*a*) If such protection is suspended or cancelled in accordance with article 14; or

(*b*) If, and for as long as, the property has, by its use, become a military objective.

2. In the circumstances of paragraph 1 (*b*), such property may only be the object of attack if:

(*a*) The attack is the only feasible means of terminating the use of the property referred to in paragraph 1 (*b*);

(*b*) All feasible precautions are taken in the choice of means and methods of attack, with a view to terminating such use and avoiding, or in any event minimizing, damage to the cultural property;

(*c*) Unless circumstances do not permit, due to requirements of immediate self-defence:

(i) The attack is ordered at the highest operational level of command;

(ii) Effective advance warning is issued to the opposing forces requiring the termination of the use referred to in paragraph 1 (*b*); and

(iii) Reasonable time is given to the opposing forces to redress the situation.

Article 14

SUSPENSION AND CANCELLATION OF ENHANCED PROTECTION

1. Where cultural property no longer meets any one of the criteria in article 10 of this Protocol, the Committee may suspend its enhanced protection status or cancel that status by removing that cultural property from the List.

2. In the case of a serious violation of article 12 in relation to cultural property under enhanced protection arising from its use in support of military action, the Committee may suspend its enhanced protection status. Where such violations are continuous, the Committee may exceptionally cancel the enhanced protection status by removing the cultural property from the List.

3. The Director-General shall, without delay, send to the Secretary-General of the United Nations and to all Parties to this Protocol notification of any decision of the Committee to suspend or cancel the enhanced protection of cultural property.

4. Before taking such a decision, the Committee shall afford an opportunity to the Parties to make their views known.

CHAPTER 4. CRIMINAL RESPONSIBILITY AND JURISDICTION

Article 15

SERIOUS VIOLATIONS OF THIS PROTOCOL

1. Any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts:

(*a*) Making cultural property under enhanced protection the object of attack;

(*b*) Using cultural property under enhanced protection or its immediate surroundings in support of military action;

(*c*) Extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;

(*d*) Making cultural property protected under the Convention and this Protocol the object of attack;

(*e*) Theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.

2. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in this article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, including the rules extending individual criminal responsibility to persons other than those who directly commit the act.

Article 16

JURISDICTION

1. Without prejudice to paragraph 2, each Party shall take the necessary legislative measures to establish its jurisdiction over offences set forth in article 15 in the following cases:

(*a*) When such an offence is committed in the territory of that State;

(*b*) When the alleged offender is a national of that State;

(*c*) In the case of offences set forth in article 15, paragraphs 1 (*a*) to (*c*), when the alleged offender is present in its territory.

2. With respect to the exercise of jurisdiction and without prejudice to article 28 of the Convention:

(*a*) This Protocol does not preclude the incurring of individual criminal responsibility or the exercise of jurisdiction under national and international law that may be applicable, or affect the exercise of jurisdiction under customary international law;

(*b*) Except in so far as a State which is not Party to this Protocol may accept and apply its provisions in accordance with article 3, paragraph 2, members of the armed forces and nationals of a State which is not Party to this Protocol, except for those nationals serving in the armed forces of a State which is a Party to this Protocol, do not incur individual criminal responsibility by virtue of this Protocol, nor does this Protocol impose an obligation to establish jurisdiction over such persons or to extradite them.

Article 17

PROSECUTION

1. The Party in whose territory the alleged offender of an offence set forth in article 15, paragraph 1 (*a*) to (*c*), is found to be present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities, for the purpose of prosecution, through proceedings in accordance with its domestic law or with, if applicable, the relevant rules of international law.

2. Without prejudice to, if applicable, the relevant rules of international law, any person regarding whom proceedings are being carried out in connection with

the Convention or this Protocol shall be guaranteed fair treatment and a fair trial in accordance with domestic law and international law at all stages of the proceedings, and in no cases shall be provided guarantees less favourable to such person than those provided by international law.

Article 18

EXTRADITION

1. The offences set forth in article 15, paragraph 1 (*a*) to (*c*), shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the Parties before the entry into force of this Protocol. Parties undertake to include such offences in every extradition treaty to be subsequently concluded between them.

2. When a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, the requested Party may, at its option, consider the present Protocol as the legal basis for extradition in respect of offences as set forth in article 15, paragraph 1 (*a*) to (*c*).

3. Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 15, paragraph 1 (*a*) to (*c*), as extraditable offences between them, subject to the conditions provided by the law of the requested Party.

4. If necessary, offences set forth in article 15, paragraph 1 (*a*) to (*c*) shall be treated, for the purposes of extradition between Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the Parties that have established jurisdiction in accordance with article 16, paragraph 1.

Article 19

MUTUAL LEGAL ASSISTANCE

1. 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 15, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. 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, Parties shall afford one another assistance in accordance with their domestic law.

Article 20

GROUNDS FOR REFUSAL

1. For the purpose of extradition, offences set forth in article 15, paragraphs 1 (*a*) to (*c*), and for the purpose of mutual legal assistance, offences set forth in article 15 shall not be regarded as political offences nor as offences connected with political offences nor as offences inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such offences 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.

2. Nothing in this Protocol shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested Party has substantial

grounds for believing that the request for extradition for offences set forth in article 15, paragraph 1 (*a*) to (*c*), or for mutual legal assistance with respect to offences set forth in article 15 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 21

MEASURES REGARDING OTHER VIOLATIONS

Without prejudice to article 28 of the Convention, each Party shall adopt such legislative, administrative or disciplinary measures as may be necessary to suppress the following acts when committed intentionally:

(*a*) Any use of cultural property in violation of the Convention or this Protocol;

(*b*) Any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or this Protocol.

CHAPTER 5. THE PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICTS NOT OF AN INTERNATIONAL CHARACTER

Article 22

ARMED CONFLICTS NOT OF AN INTERNATIONAL CHARACTER

1. This Protocol shall apply in the event of an armed conflict not of an international character, occurring within the territory of one of the Parties.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

3. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

4. Nothing in this Protocol shall prejudice the primary jurisdiction of a Party in whose territory an armed conflict not of an international character occurs over the violations set forth in article 15.

5. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the Party in the territory of which that conflict occurs.

6. The application of this Protocol to the situation referred to in paragraph 1 shall not affect the legal status of the parties to the conflict.

7. UNESCO may offer its services to the parties to the conflict.

CHAPTER 6. INSTITUTIONAL ISSUES

Article 23

MEETING OF THE PARTIES

1. The Meeting of the Parties shall be convened at the same time as the General Conference of UNESCO, and in coordination with the Meeting of the High Contracting Parties, if such a meeting has been called by the Director-General.

2. The Meeting of the Parties shall adopt its rules of procedure.

3. The Meeting of the Parties shall have the following functions:

(*a*) To elect the members of the Committee, in accordance with article 24, paragraph 1;

(*b*) To endorse the Guidelines developed by the Committee in accordance with article 27, subparagraph 1 (*a*);

(*c*) To provide guidelines for, and to supervise the use of the Fund by the Committee;

(*d*) To consider the report submitted by the Committee in accordance with article 27, paragraph 1 (*d*);

(*e*) To discuss any problem related to the application of this Protocol, and to make recommendations, as appropriate.

4. At the request of at least one fifth of the Parties, the Director-General shall convene an Extraordinary Meeting of the Parties.

Article 24

COMMITTEE FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

1. The Committee for the Protection of Cultural Property in the Event of Armed Conflict is hereby established. It shall be composed of twelve Parties which shall be elected by the Meeting of the Parties.

2. The Committee shall meet once a year in ordinary session and in extraordinary sessions whenever it deems necessary.

3. In determining membership of the Committee, Parties shall seek to ensure an equitable representation of the different regions and cultures of the world.

4. Parties members of the Committee shall choose as their representatives persons qualified in the fields of cultural heritage, defence or international law, and they shall endeavour, in consultation with one another, to ensure that the Committee as a whole contains adequate expertise in all these fields.

Article 25

TERM OF OFFICE

1. A Party shall be elected to the Committee for four years and shall be eligible for immediate re-election only once.

2. Notwithstanding the provisions of paragraph 1, the term of office of half of the members chosen at the time of the first election shall cease at the end of the first ordinary session of the Meeting of the Parties following that at which they were elected. These members shall be chosen by lot by the President of this Meeting after the first election.

Article 26

RULES OF PROCEDURE

1. The Committee shall adopt its rules of procedure.

2. A majority of the members shall constitute a quorum. Decisions of the Committee shall be taken by a majority of two thirds of its members voting.

3. Members shall not participate in the voting on any decisions relating to cultural property affected by an armed conflict to which they are parties.

Article 27

FUNCTIONS

1. The Committee shall have the following functions:

(*a*) To develop Guidelines for the implementation of this Protocol;

(*b*) To grant, suspend or cancel enhanced protection for cultural property and to establish, maintain and promote the List of Cultural Property under Enhanced Protection;

(*c*) To monitor and supervise the implementation of this Protocol and promote the identification of cultural property under enhanced protection;

(*d*) To consider and comment on reports of the Parties, to seek clarifications as required, and prepare its own report on the implementation of this Protocol for the Meeting of the Parties;

(*e*) To receive and consider requests for international assistance under article 32;

(*f*) To determine the use of the Fund;

(*g*) To perform any other function which may be assigned to it by the Meeting of the Parties.

2. The functions of the Committee shall be performed in cooperation with the Director-General.

3. The Committee shall cooperate with international and national governmental and non-governmental organizations having objectives similar to those of the Convention, its First Protocol and this Protocol. To assist in the implementation of its functions, the Committee may invite to its meetings, in an advisory capacity, eminent professional organizations such as those which have formal relations with UNESCO, including the International Committee of the Blue Shield (ICBS) and its constituent bodies. Representatives of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre) (ICCROM) and of the International Committee of the Red Cross (ICRC) may also be invited to attend in an advisory capacity.

Article 28

SECRETARIAT

The Committee shall be assisted by the Secretariat of UNESCO which shall prepare the Committee's documentation and the agenda for its meeting and shall have the responsibility for the implementation of its decisions.

Article 29

THE FUND FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

1. A Fund is hereby established for the following purposes:

(*a*) To provide financial or other assistance in support of preparatory or other measures to be taken in peacetime in accordance with, inter alia, article 5, article 10, subparagraph (*b*), and article 30; and

(*b*) To provide financial or other assistance in relation to emergency, provisional or other measures to be taken in order to protect cultural property during periods of armed conflict or of immediate recovery after the end of hostilities in accordance with, inter alia, article 8, subparagraph (*a*).

2. The Fund shall constitute a trust fund, in conformity with the provisions of the financial regulations of UNESCO.

3. Disbursements from the Fund shall be used only for such purposes as the Committee shall decide in accordance with the guidelines as defined in article 23, paragraph 3 (*c*). The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project.

4. The resources of the Fund shall consist of:

(*a*) Voluntary contributions made by the Parties;

(*b*) Contributions, gifts or bequests made by:

(i) Other States;

(ii) UNESCO or other organizations of the United Nations system;

(iii) Other intergovernmental or non-governmental organizations; and

(iv) Public or private bodies or individuals;

(*c*) Any interest accruing on the Fund;

(*d*) Funds raised by collections and receipts from events organized for the benefit of the Fund; and

(*e*) All other resources authorized by the guidelines applicable to the Fund.

CHAPTER 7. DISSEMINATION OF INFORMATION AND INTERNATIONAL ASSISTANCE

Article 30

DISSEMINATION

1. The Parties shall endeavour by appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect for cultural property by their entire population.

2. The Parties shall disseminate this Protocol as widely as possible, both in time of peace and in time of armed conflict.

3. Any military or civilian authorities who, in time of armed conflict, assume responsibilities with respect to the application of this Protocol shall be fully acquainted with the text thereof. To this end the Parties shall, as appropriate:

(*a*) Incorporate guidelines and instructions on the protection of cultural property in their military regulations;

(*b*) Develop and implement, in cooperation with UNESCO and relevant governmental and non-governmental organizations, peacetime training and educational programmes;

(*c*) Communicate to one another, through the Director-General, information on the laws, administrative provisions and measures taken under subparagraphs (*a*) and (*b*);

(*d*) Communicate to one another, as soon as possible, through the Director-General, the laws and administrative provisions which they may adopt to ensure the application of this Protocol.

Article 31

INTERNATIONAL COOPERATION

In situations of serious violations of this Protocol, the Parties undertake to act, jointly through the Committee, or individually, in cooperation with UNESCO and the United Nations and in conformity with the Charter of the United Nations.

Article 32

INTERNATIONAL ASSISTANCE

1. A Party may request from the Committee international assistance for cultural property under enhanced protection as well as assistance with respect to the preparation, development or implementation of the laws, administrative provisions and measures referred to in article 10.

2. A party to the conflict which is not a Party to this Protocol but which accepts and applies provisions in accordance with article 3, paragraph 2, may request appropriate international assistance from the Committee.

3. The Committee shall adopt rules for the submission of requests for international assistance and shall define the forms the international assistance may take.

4. Parties are encouraged to give technical assistance of all kinds, through the Committee, to those Parties or parties to the conflict who request it.

Article 33

ASSISTANCE OF UNESCO

1. A Party may call upon UNESCO for technical assistance in organizing the protection of its cultural property, such as preparatory action to safeguard cultural property, preventive and organizational measures for emergency situations and compilation of national inventories of cultural property, or in connection with any other problem arising out of the application of this Protocol. UNESCO shall accord such assistance within the limits fixed by its programme and by its resources.

2. Parties are encouraged to provide technical assistance at the bilateral or multilateral level.

3. UNESCO is authorized to make, on its own initiative, proposals on these matters to the Parties.

CHAPTER 8. EXECUTION OF THIS PROTOCOL

Article 34

PROTECTING POWERS

This Protocol shall be applied with the cooperation of the Protecting Powers responsible for safeguarding the interests of the parties to the conflict.

Article 35

CONCILIATION PROCEDURE

1. The Protecting Powers shall lend their good offices in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the parties to the conflict as to the application or interpretation of the provisions of this Protocol.

2. For this purpose, each of the Protecting Powers may, either at the invitation of one Party, of the Director-General, or on its own initiative, propose to the parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate, on the territory of a State not party to the conflict. The parties to the conflict shall be bound to give effect to the proposals for meeting made to them. The Protecting Powers shall propose for approval by the parties to the conflict a person belonging to a State not party to the conflict or a person presented by the Director-General, which person shall be invited to take part in such a meeting in the capacity of Chairman.

Article 36

CONCILIATION IN ABSENCE OF PROTECTING POWERS

1. In a conflict where no Protecting Powers are appointed, the Director-General may lend good offices or act by any other form of conciliation or mediation, with a view to settling the disagreement.

2. At the invitation of one Party or of the Director-General, the Chairman of the Committee may propose to the parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate, on the territory of a State not party to the conflict.

Article 37

TRANSLATIONS AND REPORTS

1. The Parties shall translate this Protocol into their official languages and shall communicate these official translations to the Director-General.

2. The Parties shall submit to the Committee, every four years, a report on the implementation of this Protocol.

Article 38

STATE RESPONSIBILITY

No provision in this Protocol relating to individual criminal responsibility shall affect the responsibility of States under international law, including the duty to provide reparation.

CHAPTER 9. FINAL CLAUSES

Article 39

LANGUAGES

This Protocol is drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authentic.

Article 40

SIGNATURE

This Protocol shall bear the date of 26 March 1999. It shall be opened for signature by all High Contracting Parties at The Hague from 17 May 1999 until 31 December 1999.

Article 41

RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Protocol shall be subject to ratification, acceptance or approval by High Contracting Parties which have signed this Protocol, in accordance with their respective constitutional procedures.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director-General.

Article 42

ACCESSION

1. This Protocol shall be open for accession by other High Contracting Parties from 1 January 2000.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General.

Article 43

ENTRY INTO FORCE

1. This Protocol shall enter into force three months after twenty instruments of ratification, acceptance, approval or accession have been deposited.

2. Thereafter, it shall enter into force, for each Party, three months after the deposit of its instrument of ratification, acceptance, approval or accession.

Article 44

ENTRY INTO FORCE IN SITUATIONS OF ARMED CONFLICT

The situations referred to in articles 18 and 19 of the Convention shall give immediate effect to ratifications, acceptances or approvals of or accession to this Protocol deposited by the parties to the conflict either before or after the beginning of hostilities or occupation. In such cases, the Director-General shall transmit the communications referred to in article 46 by the speediest method.

Article 45

DENUNCIATION

1. Each Party may denounce this Protocol.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General.

3. The denunciation shall take effect one year after the receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

Article 46

NOTIFICATIONS

The Director-General shall inform all High Contracting Parties, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, ap-

proval or accession provided for in articles 41 and 42 and of denunciations provided for article 45.

Article 47

REGISTRATION WITH THE UNITED NATIONS

In conformity with Article 102 of the Charter of the United Nations, this Protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General.

In faith whereof the undersigned, duly authorized, have signed the present Protocol.

DONE at The Hague, this twenty-sixth day of March 1999, in a single copy which shall be deposited in the archives of the UNESCO, and certified true copies of which shall be delivered to all the High Contracting Parties.

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3. INTERNATIONAL CIVIL AVIATION ORGANIZATION

Convention for the Unification of Certain Rules for International Carriage by Air.[8] Done at Montreal on 28 May 1999

The States Parties to this Convention,

Recognizing the significant contribution of the Convention for the Unification of Certain Rules relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law,

Recognizing the need to modernize and consolidate the Warsaw Convention and related instruments,

Recognizing the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution,

Reaffirming the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944,

Convinced that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests,

Have agreed as follows:

CHAPTER I. GENERAL PROVISIONS

Article 1

SCOPE OF APPLICATION

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a trans-shipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in chapter V, subject to the terms contained therein.

Article 2

CARRIAGE PERFORMED BY STATE AND CARRIAGE OF POSTAL ITEMS

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in article 1.

2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3. Except as provided in paragraph 2 of this article, the provisions of this Convention shall not apply to the carriage of postal items.

CHAPTER II. DOCUMENTATION AND DUTIES OF THE PARTIES RELATING TO THE CARRIAGE OF PASSENGERS, BAGGAGE AND CARGO

Article 3

PASSENGERS AND BAGGAGE

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

(*a*) An indication of the places of departure and destination;

(*b*) If the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4

CARGO

1. In respect of the carriage of cargo, an air waybill shall be delivered.

2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5

CONTENTS OF AIR WAYBILL OR CARGO RECEIPT

The air waybill or the cargo receipt shall include:

(*a*) An indication of the places of departure and destination;

(*b*) If the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and

(*c*) An indication of the weight of the consignment.

Article 6

DOCUMENT RELATING TO THE NATURE OF THE CARGO

The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7

DESCRIPTION OF AIR WAYBILL

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8

DOCUMENTATION FOR MULTIPLE PACKAGES

When there is more than one package:

(*a*) The carrier of cargo has the right to require the consignor to make out separate air waybills;

(*b*) The consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of article 4 are used.

Article 9

NON-COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

Non-compliance with the provisions of articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10

RESPONSIBILITY FOR PARTICULARS OF DOCUMENTATION

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

3. Subject to the provisions of paragraphs 1 and 2 of this article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of article 4.

Article 11

EVIDENTIARY VALUE OF DOCUMENTATION

1. The air waybill or the cargo receipt is prima facie evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

RIGHT OF DISPOSITION OF CARGO

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 13

DELIVERY OF THE CARGO

1. Except when the consignor has exercised its right under article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14

ENFORCEMENT OF THE RIGHTS OF CONSIGNOR AND CONSIGNEE

The consignor and the consignee can respectively enforce all the rights given to them by articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 15

RELATIONS OF CONSIGNOR AND CONSIGNEE OR MUTUAL RELATIONS OF THIRD PARTIES

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16

FORMALITIES OF CUSTOMS, POLICE OR OTHER PUBLIC AUTHORITIES

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III. LIABILITY OF THE CARRIER AND EXTENT OF COMPENSATION FOR DAMAGE

Article 17

DEATH AND INJURY OF PASSENGERS—DAMAGE TO BAGGAGE

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention, the term "baggage" means both checked baggage and unchecked baggage.

Article 18

DAMAGE TO CARGO

1. The carrier is liable for damage sustained in the event of the destruction, or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

(*a*) Inherent defect, quality or vice of that cargo;

(*b*) Defective packing of that cargo performed by a person other than the carrier or its servants or agents;

(*c*) An act of war or an armed conflict;

(*d*) An act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or trans-shipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19

DELAY

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20

EXONERATION

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When, by reason of death or injury of a passenger, compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This article applies to all the liability provisions in this Convention, including paragraph 1 of article 21.

Article 21

COMPENSATION IN CASE OF DEATH OR INJURY OF PASSENGERS

1. For damages arising under paragraph 1 of article 17 not exceeding 100,000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of article 17 to the extent that they exceed for each passenger 100,000 Special Drawing Rights if the carrier proves that:

(*a*) Such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(*b*) Such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22

LIMITS OF LIABILITY IN RELATION TO DELAY, BAGGAGE AND CARGO

1. In the case of damage caused by delay as specified in article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights.

2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing provisions of paragraphs 1 and 2 of this article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

6. The limits prescribed in article 21 and in this article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23

CONVERSION OF MONETARY UNITS

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in article 21 is fixed at a sum of 1,500,000 monetary units per passenger in judicial proceedings in their territories; 62,500 monetary units per passenger with respect to paragraph 1 of article 22; 15,000 monetary units per passenger with respect to paragraph 2 of article 22; and 250 monetary units per kilogram with respect to paragraph 3 of article 22. This monetary unit corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this article and the conversion method mentioned in paragraph 2 of this article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion in paragraph 2 of this article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24

REVIEW OF LIMITS

1. Without prejudice to the provisions of article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in articles 21, 22 and

23 shall be reviewed by the depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the consumer price indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the depositary shall refer the matter to a meeting of the States Parties. The depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this article, the procedure referred to in paragraph 2 of this article shall be applied at any time provided that one third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25

STIPULATION ON LIMITS

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26

INVALIDITY OF CONTRACTUAL PROVISIONS

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27

FREEDOM TO CONTRACT

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28

ADVANCE PAYMENTS

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29

BASIS OF CLAIMS

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30

SERVANTS, AGENTS—AGGREGATION OF CLAIMS

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31

TIMELY NOTICE OF COMPLAINTS

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of article 3 and paragraph 2 of article 4.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo has been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32

DEATH OF PERSON LIABLE

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

Article 33

JURISDICTION

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(*a*) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(*b*) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seized of the case.

Article 34

ARBITRATION

1. Subject to the provisions of this article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35

LIMITATION OF ACTIONS

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating that period shall be determined by the law of the court seized of the case.

Article 36

SUCCESSIVE CARRIAGE

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37

RIGHT OF RECOURSE AGAINST THIRD PARTIES

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

CHAPTER IV. COMBINED CARRIAGE

Article 38

COMBINED CARRIAGE

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

CHAPTER V. CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER

Article 39

CONTRACTING CARRIER—ACTUAL CARRIER

The provisions of this chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40

RESPECTIVE LIABILITY OF CONTRACTING AND ACTUAL CARRIERS

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41

MUTUAL LIABILITY

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of die contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in article 22 shall not affect the actual carrier unless agreed to by it.

Article 42

ADDRESSEE OF COMPLAINTS AND INSTRUCTIONS

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or

to the actual carrier. Nevertheless, instructions referred to in article 12 shall only be effective if addressed to the contracting carrier.

Article 43

SERVANTS AND AGENTS

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44

AGGREGATION OF DAMAGES

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45

ADDRESSEE OF CLAIMS

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seized of the case.

Article 46

ADDITIONAL JURISDICTION

Any action for damages contemplated in article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47

INVALIDITY OF CONTRACTUAL PROVISIONS

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this chapter or to fix a lower limit than that which is applicable according to this chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this chapter.

Article 48

MUTUAL RELATIONS OF CONTRACTING AND ACTUAL CARRIERS

Except as provided in article 45, nothing in this chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

CHAPTER VI. OTHER PROVISIONS

Article 49

MANDATORY APPLICATION

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50

INSURANCE

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51

CARRIAGE PERFORMED IN EXTRAORDINARY CIRCUMSTANCES

The provisions of articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52

DEFINITION OF DAYS

The expression "days" when used in this Convention means calendar days, not working days.

CHAPTER VII. FINAL CLAUSES

Article 53

SIGNATURE, RATIFICATION AND ENTRY INTO FORCE

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this article.

2. This Convention shall similarly be open for signature by regional economic integration organizations. For the purpose of this Convention, a "regional

economic integration organization" means any organization which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of article 1, paragraph 1 (*b*) of article 3, paragraph (*b*) of article 5, articles 23, 33, 46 and paragraph (*b*) of article 57, applies equally to a regional economic integration organization. For the purpose of article 24, the references to "a majority of the States Parties" and "one third of the States Parties" shall not apply to a regional economic integration organization.

3. This Convention shall be subject to ratification by States and by regional economic integration organizations which have signed it.

4. Any State or regional economic integration organization which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the depositary between the States which have deposited such instrument. An instrument deposited by a regional economic integration organization shall not be counted for the purpose of this paragraph.

7. For other States and for other regional economic integration organizations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The depositary shall promptly notify all signatories and States Parties of:

(*a*) Each signature of this Convention and date thereof;

(*b*) Each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(*c*) The date of entry into force of this Convention;

(*d*) The date of the coming into force of any revision of the limits of liability established under this Convention;

(*e*) Any denunciation under article 54.

Article 54

DENUNCIATION

1. Any State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

Article 55

RELATIONSHIP WITH OTHER WARSAW CONVENTION INSTRUMENTS

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to

(*a*) the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(*b*) the Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929, done at The Hague on 28 September 1955 (hereinafter called the Hague Protocol);

(*c*) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, signed at Guadalajara, Mexico, on 18 September 1961 (hereinafter called the Guadalajara Convention);

(*d*) the Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September 1955, signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(*e*) Additional Protocols Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by the Hague Protocol or the Warsaw Convention as amended by both the Hague Protocol and the Guatemala City Protocol, signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being party to one or more of the instruments referred to in subparagraphs (*a*) to (*e*) above.

Article 56

STATES WITH MORE THAN ONE SYSTEM OF LAW

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(*a*) References in article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(*b*) The reference in article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57

RESERVATIONS

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the depositary that this Convention shall not apply to:

(*a*) International carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(*b*) The carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the depositary to all States Parties to this Convention, as well as to all States parties to the Warsaw Convention, the Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols.

NOTES

[1] Not yet in force.

[2] General Assembly resolution 54/4, annex.

[3] Came into force on 10 April 2002.

[4] General Assembly resolution 54/109, annex.

[5] Came into force on 19 November 2000.

[6] *International Legal Materials*, vol. 38 (1999), p. 1207.

[7] Not yet in force.

[8] Not yet in force.

Chapter V[1]

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the United Nations Administrative Tribunal[2]

1. JUDGEMENT NO. 914 (23 JULY 1999): GORDON AND PELANNE V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

Failure to compensate sufficiently for the non-circulation of vacancy announcements—Waiver of a vacancy announcement in "an extraordinary emergency situation"—Respondent has burden of proof of demonstrating that staff member had received consideration for a post or promotion—Remedies for serious maladministration—Staff rule 112.3

Because the two Applicants set forth the same pleas and raised identical issues, namely, the filling of two D-1 post in the Office of Human Resources Management without first circulating vacancy announcements for the posts, the Tribunal ordered the joinder of the cases.

The Applicants had maintained that the failure to circulate vacancy announcements "violated their right to be considered fairly and objectively for the posts", and that the decision violated the relevant provisions of Secretary-General's Bulletin ST/SGB/267 of 15 November 1993 and administrative instruction ST/AI/390, also of 15 November 1993, on placements and promotion.

The Respondent had conceded that proper procedures were not followed, but argued that the reorganization of the Office required that the two D-1 posts be filled on an urgent basis, and that the Office could not afford a delay of four to six months that would have resulted from announcing these two vacancies and following the normal placement and promotion procedures.

The Joint Appeals Board (JAB) had found that the urgency alleged by the Respondent was not of sufficient magnitude to overcome the need to issue a vacancy announcement, and the Tribunal agreed. The Tribunal was satisfied that, under the standard established in Judgement No. 362, *Williamson* (1986), no "extraordinary emergency situation" existed that might have justified the suspension of proper procedures for promotion. Such situations, for example, might include peacekeeping or natural disaster relief operations. The Tribunal was of the view that the Assistant Secretary-General for Human Resources Management could have found other ways of coping with the reorganization of his department, without having to breach the procedures guaranteeing due process for the Applicants. If, as the Respondent claimed, the allegedly "urgent" circumstances could be considered an "extraordinary emergency situation", justifying a departure from the rules, such an excuse could be invoked so frequently that the rules would seldom be followed. Such a result would lead to a complete breakdown of the promotion system, would severely affect career development and would lead to wholesale favouritism.

The Tribunal, pointing out that the Respondent had the burden of proving that a staff member received consideration for a post or promotion, was in agreement with the JAB findings that the Respondent had failed to demonstrate that the Applicants had been fully considered for promotion for the posts in question (cf. Judgement No. 447, *Abbas* (1989)).

The JAB had recommended, and the Secretary-General accepted, that the Applicants are awarded compensation of two months net base salary for the irregularities; however, the Tribunal was of the view that in the light of the serious breach of procedures, the amount of compensation awarded was inadequate. The Tribunal recalled that the Board's reason for limiting its recommendation of compensation was there was no indication that the Applicants would have automatically been selected for the posts had they been given full consideration, and found this argument unpersuasive. In the Tribunal's view, as a result of the improper procedure implemented by the Respondent, the Applicants had been automatically excluded from any opportunity to compete for the posts. The Respondent's disregard of proper procedures was detrimental to the Applicants' career development, and had caused the frustration and mental anguish of not being considered for posts for which they might have been qualified. Moreover, the Tribunal could not take lightly the violation of due process by the Respondent, particularly when ST/AI/390 (superseded in 1996 by ST/AI/413), had been enacted by the Respondent in order to prevent the very practices to which he had resorted in the present case. The Tribunal found that in the light of the extraordinary circumstances described above, the Applicants were entitled to a larger amount of compensation than was recommended by the JAB and accepted by the Respondent.

The Tribunal felt compelled to add that this was such a serious case of maladministration that consideration should be given to invoking staff rule 112.3, which provided:

> "*Financial responsibility*
>
> "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction."

Thus, the Secretary-General might decide that the officials who violated staff regulations and administrative instructions should be held personally accountable for the monetary damages occasioned by such violations. (cf. Judgements No. 358, *Sherif* (1995), and No. 887, *Ludvigsen* (1998)). Invoking staff rule 112.3 would deter staff from deliberately flouting the rules and prevent the Organization from having to pay for the intentional violation of the rules by its officials.

For the foregoing reasons, the Tribunal ordered the Respondent to pay the Applicants each compensation in the amount of 18 months of base salary.

2. JUDGEMENT NO. 923 (29 JULY 1999): MOORE V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[4]

Separation from service—Material misstatement of fact on P. 11 form—Staff regulation 9.1—Issue of a special advisory board to review termination decision—Question of improper motive or prejudice—Effect of additional information requested from staff member for deficient P. 11 form—Issue of proper recruitment process

The Applicant entered the service of the United Nations on 15 January 1995, on a two-year intermediate-term appointment under the 200 Series of the United Nations Staff Rules, as Director, United Nations International Drug Control Programme (UNDCP) country office, Myanmar, at the L-5 level. He was separated from service on 16 June 1995, on the ground that he had misrepresented himself during the recruitment process.

During the recruitment process, on 23 August 1994, the Applicant had submitted a P.11 form, certifying that his statements therein were true, complete and correct to the best of his knowledge and belief, and that he understood that any misrepresentation or any material omission made on the P.11 form or other document requested by the United Nations rendered a staff member of the Organization liable to termination or dismissal.

In the box provided to give reasons for leaving the services of his prior employer, the World Health Organization (WHO), where he had worked from April 1984 to November 1992, he wrote "Develop own consultancy practice". However, a reference check revealed that the Applicant's appointment had not been extended at WHO and that the Applicant had filed an appeal over the matter. The UNDCP offer was withdrawn, but subsequently reinstated after an explanation was given by the Applicant, in a letter dated 27 November 1994.

On 1 February 1995, the International Labour Organization Administrative Tribunal (ILOAT) rendered a judgement in the Applicant's case, finding in favour of WHO, holding, among other things, that even if the more serious charges against the Applicant had been based on hearsay, WHO had acted within its discretion in not renewing the Applicant's contract. ILOAT noted that the Applicant had been criticized in his annual performance reports, had more than once failed to follow the WHO rules, and had made public statements at odds with WHO policy.

On 12 May 1995, the Personnel Officer informed the Applicant that he was separated from service with immediate effect on the ground that the ILOAT judgement had revealed that "the real reason you left WHO was the non-renewal of your fixed-term appointment due to your performance record and WHO's assessment on various grounds that you were unfit for international service". He also stated that "according to the judgement you were aware of these facts at the time of your separation from WHO". He further noted that had the Applicant completed the P.11 form correctly so that the circumstances surrounding his separation from WHO had been known to the United Nations Office at Vienna (UNOV), the Applicant would not have been recruited. Finally, he explained that the Applicant's non-disclosure of those circumstances vitiated his employment contract and that, as a result, a valid contract had never come into being. On 19 May 1995, however, the Applicant was informed by Personnel Service, UNOV, that he would be placed on special leave with full pay with effect from 13 May 1995 until his departure from Myanmar on 16 June 1995. The Applicant appealed his separation.

The Tribunal was satisfied that the Applicant's statement on his P.11 form that he had left WHO to develop his own consultancy practice was disingenuous and grossly misleading and that it constituted a material misstatement of fact. The Tribunal also was satisfied that the Applicant's excuse that the P.11 form had not requested or allowed for the elaboration for leaving the WHO employment was without merit. The Tribunal was further satisfied that the Applicant's November letter of explanation to the Senior Personnel Officer, UNOV, was likewise disingenuous and lacking in candour. It had failed to set out the allegations that had been

made against him and that were the subject matter of his application to ILOAT. Also it had presented a misleading précis as to the recommendations of the Board of Appeal insofar as the Applicant was concerned. For example, he stated that the Board of Appeal had "found unanimously in his favour", which suggested that such finding was on the merits. However, the Board had merely found that the decision not to renew his contract was procedurally flawed, that the reasons which had been given for such decision were unclear and that his unsuitability for international service had not been substantiated. The letter also failed to address the allegations that had been made against him and the content of the Board of Appeal's report. The Tribunal fully appreciated that the Applicant had in the course of that letter expressed a reluctance to go into the facts of his dispute with WHO, on the grounds of confidentiality. However, the Tribunal was nonetheless satisfied that by the letter of 27 November 1994, the Applicant had presented his situation in a disingenuous manner and that by this letter he had not effectively "put to right" the grossly misleading picture which had arisen by virtue of the manner in which he had completed the original personal history in the P.11 form.

The Tribunal recalled staff regulation 9.1, which provided that the Secretary-General might terminate a fixed-term appointment before the normal expiration for various reasons, including "if facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of his or her appointment, should, under the standards established in the Charter, have precluded his or her appointment". The JAB regretted that the procedures foreseen for termination under staff regulation 9.1 had not been applied in the present case since "they would have ensured a more proper and expedient decision-making process and might well have proved more cost-effective than the approach chosen, by avoiding the costs of a lengthy appeal procedure". It further noted that some of the requirements provided for in cases of termination under the Staff Rules and Regulations and the letter of appointment had de facto been met, such as one month's written notice, fulfilled by placing the Applicant on leave with full pay for one month from his termination until his departure from Myanmar, and the payment of a repatriation grant and travel costs.

The Applicant argued that the Respondent, in not invoking staff regulation 9.1 and the convening of a special advisory board, or summarily dismissing him with the possibility of a disciplinary hearing, and instead contending that there had never been a valid contract because of the material omission and representation, had denied him any chance to defend himself. With regard to the claim that the Respondent had not invoked staff regulation 9.1, the Tribunal was satisfied that the JAB was correct in its finding that, while the Respondent had not expressly invoked that regulation, he had de facto applied it to the Applicant's situation.

As to the Applicant's contention that no termination under staff regulation 9.1 should have taken place until the matter had been considered and reported on by a special advisory board, the Tribunal was satisfied that while that particular provision was applicable in relation to permanent appointments, it had no mandatory application in relation to fixed-term appointments (cf. Judgement No. 637, *Chhatwal* (1994)). The Applicant, having been the holder of a fixed-term appointment, was not entitled to have a special advisory board convened to review the termination of his appointment. Accordingly, the Applicant's rights to due process had not been violated.

Regarding the Applicant's argument that the decision had been tainted by some improper motive or prejudice, the Tribunal was satisfied that the onus of proving

such allegations by means, of cogent evidence had not been discharged. The Respondent was entitled to accept the ILOAT judgement and, in the light of its findings of fact, to have concluded that new facts had come to light which had they been known previously would have precluded the Applicant's appointment. The Tribunal would not review the findings of ILOAT or investigate or adjudicate upon the charges of misconduct or breaches of the Staff-Regulations which were alleged against the Applicant in connection with the performance by him of his duties at WHO.

The Tribunal was satisfied that, while there was a material omission or misrepresentation contained in the Applicant's answers on the P.11 form, it had to be considered in the light of the explanation the Applicant had furnished in his letter of 17 November 1994. In the view of the Tribunal, had the letter made good the deficiency in the P.11 form, the Respondent would not have been entitled to terminate the Applicant's services on the ground that the form itself was inadequate or misleading.

The Tribunal also was satisfied that the additional information provided by the letter of 27 November 1994 was not to the same degree deceptive or disingenuous as the form, and also noted that in that letter the Applicant had agreed to provide such additional information as might be sought from him in that regard. The Tribunal noted that the Respondent had not requested additional information and was further satisfied that the Respondent was remiss in appointing the Applicant without awaiting the judgement of ILOAT, which the Respondent knew was to be rendered soon, or making such further inquiries as prudence would have dictated. The Tribunal observed that the additional information contained in the ILOAT judgement contained sufficient "new facts" as would have precluded the Applicant's appointment.

The Tribunal further observed that the Respondent's conduct had induced the Applicant to believe that with the letter of explanation the Applicant had furnished full and complete information, that the original deficit was now rectified and that the question as to the circumstances under which he had left WHO was closed. The Applicant had been induced to take up his fixed-term appointment and to forgo such other business opportunities as independent consultant or otherwise as might have been available to him.

For the foregoing reasons, the Tribunal ordered the Respondent to pay to the Applicant one month's net base salary already agreed upon, and an additional amount equivalent to two months' net base salary.

3. JUDGEMENT NO. 930 (15 NOVEMBER 1999): KHAWAJA V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[5]

Non-conversion of fixed-term appointment—Staff rule 104.12 (full and fair consideration for permanent appointment)—Staff rule 109.7 (no expectation of renewal or conversion of fixed-term appointment)—Issue of secondment from government service—Staff rule 104.12 (b) (iii) (all interests of Organization should be taken into account)

The Applicant entered the service of the United Nations Children's Fund (UNICEF) on 1 November 1990 on a two-year fixed-term appointment as a Planning and Evaluation Officer, at the NO-C level, in Islamabad and, as requested by UNICEF, after he had submitted a "Letter of Secondment" from the Academy of Education Planning and Management (AEPAM), Ministry of Education of the Government of Pakistan, granting him "two years' leave extraordinary" to join UNICEF.

On 15 September 1992, UNICEF approved a two-year extension of his appointment, and AEPAM agreed to the extension.

On 3 October 1994, the UNICEF Senior Programme Planning Officer recommended that the Applicant be granted a permanent appointment, but AEPAM informed the Applicant and UNICEF that the Applicant should report back to work at AEPAM on 1 November 1994. The Applicant signed a letter of appointment for the period 1 November through 30 November 1994.

On 16 November 1994, the UNICEF Appointment and Placement Committee (APC) in Islamabad recommended that the Applicant be released from service with UNICEF so that he could "obey ... the request from the Pakistani Government", and the recommendation was approved.

Subsequently, on 6 December 1994, the Director General, AEPAM, wrote to the Applicant informing him that the Minister of Education would have no objection to giving him leave for a period of three years. However, after the Applicant had informed UNICEF of this development, the UNICEF representative told the Applicant that the non-renewal of his appointment had been accepted and encouraged him to return to the service of AEPAM. The Applicant appealed, claiming that he was entitled to conversion to a permanent appointment based on his good performance over four years and the recommendation of his supervisor, and that his contract should have been renewed as he was not on secondment from his Government.

In consideration of the matter, the Tribunal noted that staff rule 104.12, on which the Applicant appeared to have relied, did not give him the right to the "full and careful consideration" for his request to be considered for a permanent appointment before five years of service had elapsed. And since the recommendation that the Applicant should receive a permanent appointment was made prior to his having served five years, the APC, in 1994, had only to consider whether or not the Applicant should be appointed to a new fixed-term contract, and had decided against that possibility. The Tribunal further recalled that staff rule 109.7 stated that a fixed-term appointment shall expire automatically, and without prior notice, on the expiration date.

However, as the Tribunal noted, even though the APC did not have an obligation to consider the Applicant's appointment for conversion, there was clear indication that it had in fact given "full and fair consideration" to the continuation of the Applicant's service. The APC had examined extensive documentation submitted and held discussions on the matter of the Applicant's situation, after which it had agreed that the Applicant should return to his former post with the Government of Pakistan. In the view of the Tribunal, this implied that the APC had not supported the recommendation that he receive a permanent appointment. This recommendation by the APC, as pointed out by the Tribunal, need not to have been based on a formal contract of secondment, irrespective of how close to a secondment the arrangement between the three concerned parties was. The Tribunal was satisfied that the APC had simply wanted to respect the wishes of the Government of Pakistan, in view of the understanding reached by the three parties.

The Tribunal recalled that staff rule 104.12(*b*)(iii) stated that "a staff member ... will be given every reasonable consideration for a permanent appointment, taking into account all the interests of the Organization" and, naturally, prominent among those interests would be that of respecting the understanding established with the Government of Pakistan to the effect that the Applicant would return to his service of that Government, where he was a Director in AEPAM. Again, the issue was

not whether the communications exchanged and the understanding reached among UNICEF, AEPAM and the Applicant constituted a formal contract of secondment. And in the opinion of the Tribunal, the record indicated that there was a clear understanding among all the parties involved that the Applicant would return to service with the Government of Pakistan in AEPAM. The Tribunal concluded that the Applicant had been treated fairly and rejected his application in its entirety.

4. JUDGEMENT NO. 936 (15 NOVEMBER 1999): SALAMA V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[6]

Lateral transfer and non-promotion to D-1—Secretary-General has power to appoint staff members—Justified expectations raised by the Organization must be fulfilled—Cardinal principle of good faith towards staff member—Article 9 of Tribunal's statute—Staff rule 112.3—Clarification of Tribunal's jurisdiction in promotion cases

The Applicant entered the service of the United Nations on 7 September 1992 on a two-year fixed-term contract as Chief Medical Officer, at the P-5, step VI level, in the Economic Commission for Africa (ECA), Addis Ababa. His appointment was extended several times. In October 1995, an internal vacancy announcement was issued for the D-1 post of Deputy Director of the Medical Services Division at United Nations Headquarters in New York, and the Applicant applied for the post.

On 22 December 1995, the Assistant Secretary-General for Human Resources Management informed the Chairperson of the Appointments and Promotion Board (APB) that the Secretary-General had decided that the Applicant was "the candidate most suitable to serve on the ... post at his current level ... [and that] the vacancy announcement was cancelled". The D-1 post had been loaned to the Economic Commission for Latin America and the Caribbean (ECLAC).

On 29 March 1996, the Medical Director wrote to the Assistant Secretary-General for Human Resources Management, recommending that another staff member of the Medical Services Division, at the P-5 level, "be designated Acting Deputy Director of the Medical Services Division, effective 1 April 1996".

Subsequently, in November 1996, the Office of Human Resources Management appointed the Acting Deputy Medical Director as one of two Deputy Medical Directors, the other Deputy Medical Director being the Applicant. After the Medical Director expressed surprise over this turn of events, she was informed by the Assistant Secretary-General that the decision had been made out of his "high regard for the other Deputy Medical Director and your own respect for his seniority and competence". She was further informed that when the loaned D-1 post returned to Medical Services, an open competitive process for the appointment would be appropriate.

Also, in November 1996, the Applicant signed his letter of appointment, effective 7 September 1996, designating him as "Deputy Medical Director" at the P-5, step IX level, for a three-year fixed-term appointment.

In June 1997, the Applicant wrote to the Secretary-General, requesting that his functional title and level be reviewed and, subsequently, the Applicant appealed to the Administrative Tribunal contending that he had a valid appointment to the D-1 post of Deputy Medical Director and that the loaning of the D-1 post to ECLAC and the issuance of a new vacancy announcement for the post, once it had been returned to the Medical Services Division, violated the Applicant's conditions of appointment.

In consideration of the case, the Tribunal recalled that, according to Article 101 of the Charter of the United Nations, the Secretary-General had the power to appoint staff members of the Secretariat. That power had been confirmed by staff regulation 4.1. Undoubtedly, such powers were regulated so that they were exercised with due guarantees to the rights of staff members for the efficient administration of the Organization, as expressed in staff regulation 4.2. Under staff rule 104.14(*a*)(i), the Secretary-General shall establish an Appointments and Promotion Board "to give advice on the appointment, promotion and review of staff" Thus, the APB was an advisory body and its recommendations might or might not be followed by the Secretary-General. In the present case, the Secretary-General had conveyed to the APB that he had already made up his mind and he did not need its advice. He had decided to appoint the Applicant to the post of Deputy Medical Director at the P-5 level.

The Tribunal noted that the first communication the Applicant had received from the Administration was a letter from the Assistant Secretary-General for Human Resources Management, dated 23 January 1996, informing him that the Secretary-General had approved his selection for the post of Deputy Director, not mentioning that he was being appointed at the P-5 level against a D-1 post—which had been loaned outside the Medical Services—and that the vacancy announcement had been cancelled. It was not until 1 June 1996 that the Assistant Secretary-General informed the Applicant of the actual situation. As the Tribunal noted, at that time it was definitively too late to protest or reject it: he had already arranged for the shipment of his household effects, sold his cars, taken his children out of school and made all other necessary arrangements for his relocation to New York.

Clearly, the June 1996 letter had led the Applicant to arrive at certain conclusions: namely, that (*a*) the D-1 post had been temporarily loaned outside the Division, (*b*) as soon as the D-1 post was returned, he would be placed against it and eventually promoted to that level, and (*c*) he would perform the functions of Deputy Medical Director, regardless. In the Tribunal's view, it must have appeared to the Applicant that the fact that the D-1 post had to be loaned out was the only possible reason for his not being promoted at that moment and for his consequent and temporary lateral transfer. The Applicant had been posted in Addis Ababa since 7 September 1992, as Chief Medical Officer of ECA, at the P-5 level, and had ample seniority for promotion to D-1 and, in the opinion of the Tribunal, the Applicant therefore had no reason to even suspect that his appointment as Deputy Medical Director was not at the D-1 level, let alone to have thought that he was being transferred from Addis Ababa merely to fulfill a temporary need of the Division.

However, as observed by the Tribunal, none of these justified expectations of the Applicant had been fulfilled, and it was the duty of the Organization to satisfy the Applicant's expectations, as they had been raised by the Organization itself. Even though the Applicant had signed the letter of appointment whereby he accepted his appointment at the P-5 level, it was obvious that he had had no other choice, having already relocated to New York with his family. The Applicant was faced with a fait accompli and could only hope that his expectations would be met, bearing in mind that a cardinal principle of the Organization was that it should act in good faith towards its staff members.

The Tribunal noted the unacceptable hostile conduct of the Medical Director towards the Applicant upon his arrival and the fact that there did not appear to be an explanation for the conduct of the Assistant Secretary-General for Human Resources Management, who was not only directly responsible for the ominous omissions related to the appointment of the Applicant, but had condoned the humili-

ating treatment of the Applicant by the Medical Director. In addition, the Assistant Secretary-General had decided to designate two Deputy Medical Directors, within the Medical Services Division—one being the Applicant and the other the Acting Deputy Director—thus personally contributing to the general hierarchical disorder reigning in the Division.

The Tribunal also noted that, on 2 December 1996, the Assistant Secretary-General for Management and Coordination had issued a memorandum stating that when the loaned D-1 post was returned to the Medical Service, an open competitive process for the appointment would be appropriate. The Joint Appeals Board (JAB) subsequently had recommended that no vacancy announcement be issued for the post of Deputy Medical Director until the subject appeal had been decided upon, but the recommendation was rejected by the Under-Secretary-General for Management. The Tribunal further noted that, in August 1998, when the D-1 post was again advertised, the post had been given to another Senior Medical Director and not to the Applicant.

For the reasons stated above, the Tribunal found, in accordance with article 9 of its statute, that his case was exceptional. In particular: (*a*) the glaring omission by the Assistant Secretary-General for Human Resources Management to fully inform the Applicant of a fundamental condition of his appointment was at best an act of unacceptable negligence and raised the possibility that it was deliberate; (*b*) the humiliating treatment of the Applicant by the Medical Director had continued unchecked for several years; (*c*) the Respondent had failed to take steps to remedy the injustices done to the Applicant; (*d*) the Respondent's refusal to suspend action pending the outcome of the consideration of the case on the merits by the JAB precluded the possibility of correcting the situation on the part of the Respondent; (*e*) his hopes for further upward career movement had been severely diminished after the most recent filing of the D-1 post in a competition which should not even had taken place; and, finally, (*f*) the Applicant had suffered the salary difference between the P-5 and the D-1 levels (allowing credit for the US$15,000 which had been paid to him), which continued even today, and would clearly have implications for his future pension payments. As a result, the Applicant had suffered considerable financial losses, as well as immense moral injury.

In view of the above, the Tribunal held that the Applicant was entitled to compensation which, in the light of the aforementioned extraordinary circumstances the Tribunal assessed at the amount of three years of the Applicant's net base salary at the rate in effect of the date of the judgement.

In addition, the Tribunal drew the attention of the Secretary-General to staff rule 112.3, which provided:

"*Financial responsibility*

> "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction."

Thus, the Tribunal noted that the Secretary-General might consider that the above rule might be invoked against such officials as he might find had deliberately violated the Applicant's rights by undermining his position and humiliating him.

Finally, the Tribunal offered a clarification regarding its jurisdiction: At its 1999 summer session, it decided to adjourn the case to the autumn session, in order

to hold oral proceedings. In the letter informing the parties of its decision, the Tribunal also urged the Respondent "to consider suspending the promotion process in order to preserve the right of all staff concerned, pending its judgement in the case". At the time, the Tribunal was unaware that the selection process for the D-1 post had already been completed.

At the oral hearing, the Respondent presented a copy of a letter from the Under-Secretary-General for Management to the Under-Secretary-General for Legal Affairs, expressing concern about the Tribunal's request "as it indicates the Tribunal's intention to assume a role that is the clear and exclusive prerogative of the Secretary-General", and emphasizing "the unacceptability of the Tribunal deciding on actual promotions".

The Tribunal explained that its intentions and expectations had evidently been misunderstood. The Tribunal was and at all times had been fully aware of the limitations on its jurisdiction. The Tribunal's letter was prompted by its belief that the Secretary-General would be interested in knowing the Tribunal's findings as to the merits of the case and, accordingly, might delay action rather than alter the status quo, making an order of specific performance impossible. As the post had been filled, the Tribunal was confronted with a fait accompli, making it futile and improper to issue such an order.

The Tribunal ordered the Respondent to pay the Applicant compensation of three years net base salary and recommended that the Respondent make every effort to find a D-1 post for the Applicant commensurate with his qualifications and experience.

5. JUDGEMENT NO. 939 (19 NOVEMBER 1999): SHAHROUR V. THE COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST[7]

Termination under Area staff regulation 9.1 and Area staff rule 109.1—Discretion in deciding to terminate in the interests of the Organization is not unlimited—Treatment of decisions imposing disciplinary measures—Question of evidence supporting a misconduct charge—Question of prejudice—Issue of disciplinary measure being disproportionate to misconduct

The Applicant entered the service of UNRWA on 2 July 1990 on a temporary indefinite appointment as a Disability Programme Officer, in the Relief and Social Services Office, UNRWA, Syrian Arab Republic. As a condition of his appointment, the Applicant had accepted in writing that he would give up his private clinic for the complete duration of his employment with the Agency.

On 9 October 1994, the Director of UNRWA Affairs convened a Board of Inquiry to investigate several allegations of improper conduct on the part of the Applicant, regarding his involvement in receipt from a non-governmental organization of money that might have been donated for the benefit of the Agency; that he had made statements to the press possibly in violation of Area staff regulations and rules; and that he still continued his medical practice in violation of his written statement to the contrary. Based on the conclusions of the Board of Inquiry, the Applicant was terminated under Area staff regulation 9.1 and Area staff rule 109.1, effective 24 November 1994. The Applicant appealed.

As the Tribunal recalled, Area staff regulation 9.1 stated that "the Commissioner-General may at any time terminate the appointment of any staff member if,

in his opinion, such action would be in the interest of the Agency". The Tribunal further recalled that there could be no doubt that under Area staff regulation 9.1, the Administration exercised a discretionary power (cf. Judgement No. 117, *van der Valk* (1998)). However, the discretion of the Agency to terminate employment in its interest was not unlimited or unfettered. Its exercise was subject to review by the Tribunal and could be declared invalid if it had been abused. The abuse might arise not only from improper motive, prejudice or improper purpose, but also from any substantive irregularity such as error of fact or mistaken conclusions, or procedural irregularity.

Moreover, the Administration clearly could not terminate a staff member's employment in the interests of the Agency without having reasons for doing so and without stating those reasons. In the view of the Tribunal, where the grounds for the dismissal were patently misconduct, as in the present case, and it was confronted with a case of imposition of disciplinary measures, the general principles of law pertaining to disciplinary measures became applicable, together with any provisions of written law.

Beginning with Judgement No. 18, *Crawford*, and No. 29, *Gordon* (1953), the Tribunal had treated decisions to impose disciplinary measures somewhat differently than other discretionary decisions because, while they were similar in some respects to decisions such as those terminating employment for unsatisfactory service, they also involved the exercise of a quasi-judicial power to impose sanctions for offences rather than the exercise of pure executive discretion (see e.g., most recently, Judgement No. 890, *Augustine* (1998)).

In that connection, the Tribunal generally explained its jurisprudence in disciplinary cases as follows: the Tribunal examined (*a*) whether the established facts on which the disciplinary measures were based had been established; (*b*) whether the established facts legally amounted to misconduct or serious misconduct; (*c*) whether there had been substantive irregularity (e.g., omission of facts or consideration of irrelevant facts); (*d*) whether there had been any procedural irregularity; (*e*) whether there was an improper motive or abuse of purpose; (*f*) whether the sanction was within the power of the Respondent; (*g*) whether the sanction imposed was disproportionate to the offence; and, (*h*) as in the case of discretionary powers in general, whether there had been arbitrariness. (Cf. Judgement No. 897, *Jhuthi* (1998).)

The Tribunal considered that the present case had raised several issues: (*a*) whether the evidence warranted the finding of misconduct upon which the decision to terminate employment had been based; (*b*) whether there was an improper motive or prejudice on the part of the Administration; and (*c*) whether the sanction of dismissal was disproportionate to the misconduct.

Regarding the first issue, the Tribunal considered that there were three grounds on which the Administration based its finding that misconduct had been proved: (*a*) the Applicant had engaged, without permission, in a private medical practice and thus had violated the Staff Regulations; (*b*) the Applicant had violated the Staff Regulations and Staff Rules by arranging without prior approval a written interview which had resulted in a publication in a local magazine, ostensibly describing voluntary activities of a local charitable organization in the Syrian Arab Republic of which he was a member but focusing to a great extent on services rendered by UNRWA without proper acknowledgement; and (*c*) the Applicant had been involved in receiving money from a NGO, which was questionable conduct and a violation of the Staff Regulations and Rules although there had been no financial loss to the Agency.

Concerning the above grounds, the Tribunal found that the conclusions upon which the decision to terminate the Applicant's employment had been based were supported by the evidence on record. Not only was there ample evidence that the Applicant was maintaining without permission, and contrary to his own written undertaking in that regard, an outside activity which was prohibited by the Staff Regulations, but also the Applicant had not denied his knowledge of wrongdoing. The claim that the Applicant's superior had been aware of the Applicant's misconduct for some time had no relevance either to the finding that he had engaged in the conduct or to the illegality of such conduct.

The Tribunal also concluded that there was sufficient evidence in the record to establish the other two grounds on which the termination decision had been based. The evidence established that the Applicant had given an unauthorized interview and that he had dealt with a NGO improperly. Both actions constituted conduct not in keeping with the status of a staff member of the Agency and violated the Staff Regulations and Rules.

The Applicant also alleged prejudice against him on the part of the Administration, based on the fact that his superior had known for some time that he was running a private clinic without permission and that other officers in UNRWA were also carrying on outside activities of a like nature. In the Tribunal's view, neither fact, if true, would conclusively establish that there was prejudice against the Applicant.

The Tribunal found that the sanction of termination of employment was not disproportionate in the light of the misconduct of which the Applicant was found guilty. As stated above, the Applicant's violation of the law by engaging in unauthorized outside activity was serious enough to warrant dismissal. The other two grounds for the sanction only served to compound the seriousness of the Applicant's offences, in the view of the Tribunal.

For the foregoing reasons, the Tribunal dismissed the application in its entirety.

6. JUDGEMENT NO. 941 (19 NOVEMBER 1999): KIWANUKA V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[8]

Termination pursuant to staff rule 110.2—Broad power of discretion regarding disciplinary matters—Judgement No. 479, Caine (1990)—Disciplinary decisions involve exercise of quasi-judicial power—Tribunal's review of such decisions—Burden of proof on Respondent to produce evidence of misconduct—Role of Joint Disciplinary Committee—Issue of suspension from duty without pay

The Applicant entered the service of the United Nations on 6 August 1993 in the Field Administration and Logistics Division, Department of Peacekeeping Operations, on a one-year fixed-term appointment at the P-3 level, as Deputy Chief Finance Officer, United Nations Peacekeeping Force in Cyprus (UNFICYP). His functional title was changed to Chief Finance Officer on 6 February 1994. He received further extensions of his fixed-term appointment, through 31 May 1997. On 1 July 1996, he was suspended without pay pending the resolution of charges of misconduct which had been brought against him. In April 1997, this was converted to suspension with pay, retroactive to 1 December 1996. He was summarily dismissed with effect from 19 July 1997.

On 2 July 1996, the Force Catering Officer (FCO) had submitted a statement alleging a fraudulent scheme involving the Applicant's certifying false invoices for

rations for the duty station. The FCO also submitted to the Force Provost Marshal of UNFICYP a taped conversation of the Applicant and the former FCO explaining the scheme and their attempted recruitment of him (the current FCO). An investigation was carried out, and on 4 December 1996 the Assistant Secretary-General for Human Resources Management informed the Applicant that he had decided to refer the matter to a Joint Disciplinary Committee (JDC) for advice. The JDC submitted its report on 22 May 1997, concluding that there was no credible evidence presented that the Applicant had participated in or received any benefits from acts of misconduct against the United Nations, and made a recommendation accordingly. However, based on additional information made available after the JDC had completed its work, including the forensic analysis of the tape submitted by the FCO, the Under-Secretary-General for Management informed the Applicant that the Secretary-General did not share the Committee's conclusions and recommendations, and that he had decided to summarily dismiss the Applicant pursuant to staff regulation 10.2 and staff rule 110.3(*a*)(viii), effective 19 July 1997.

The Applicant appealed, contending that the preliminary investigation by the Office of Internal Oversight Services had violated his rights to due process and fair treatment; his suspension without pay for over 10 months was improper; the disciplinary proceedings had been tainted by delay, improper procedure and denial of due process; and the decision to reject the findings of the JDC in order to summarily dismiss him was improper and ill-founded.

In consideration of the case, the Tribunal recalled that the Secretary-General had a broad power of discretion, and its exercise could only be questioned if due process had not been followed or if it had been tainted by prejudice or bias or other extraneous factors. In Judgement No. 479, *Caine* (1990), the Tribunal clarified and expanded this scrutiny: the Tribunal would intervene when the administrative action was "vitiated by any prejudicial or extraneous factors, by significant procedural irregularity, or by a significant mistake of fact".

Furthermore, the Tribunal recognized that, unlike other discretionary powers, such as transferring and terminating services, the Secretary-General's power of discretion was also a special exercise of quasi-judicial power. Therefore, the Administration's interest in maintaining high standards of conduct and thus protecting itself must be reconciled with the interest of staff in being assured that they were not penalized unfairly or arbitrarily.

In that regard, it was the practice of the Tribunal to determine whether the material findings of fact could be supported by the evidence without substituting its own judgement for that of the Administration (cf. Judgements No. 490, *Liu* (1990), and No. 616, *Sirakyan* (1993)); it made a judgement on whether the findings of fact were reasonably justifiable and supported by the evidence. The Tribunal also must determine whether the established facts legally amounted to misconduct or serious misconduct. In that connection, the Tribunal recalled that in Judgement No. 927, *Abdul Halim et al.* (1999), with regard to one applicant, the Tribunal had held that an error of judgement on the part of the applicant resulting in loss of confidence on the part of the Commissioner-General of UNRWA could not be characterized as misconduct.

In the present case, the Tribunal observed that, contrary to the Joint Disciplinary Committee's recommendations to exonerate the Applicant from all charges made against him, the Respondent had determined that the Applicant was guilty of the charges and had summarily dismissed him. Central to the Respondent's decision

to reject the Committee's findings was the probative weight of the tape recording evidence that implicated the Applicant. The Committee's belief that tape recordings could be easily edited, dubbed and/or altered had led to its conclusion that the tape recording might have been tampered with.

The Tribunal had held that the burden of proof rested with the Respondent to produce evidence that raised a reasonable inference that misconduct had occurred, and it was then up to the Applicant to provide a proper explanation or evidence to rebut the prima facie case. In that regard, the Tribunal found that the Applicant's explanation that the tape recording lacked credibility or authenticity and had been tampered with was merely an unsubstantiated allegation that contradicted the evidence of experts who had examined the tape.

The Tribunal emphasized further that the recommendation and conclusions of the JDC were advisory and need not be accepted by the Administration. The Respondent had the discretion to reach a different conclusion after consideration of all the facts and circumstances of the case. (cf. Judgements No. 494, *Rezene* (1990); No. 529, *Dey* (1991); No. 551, *Mohapi* (1992); No. 582, *Neuman* (1992); No. 641, *Farid* (1994); and No. 673, *Hossain* (1994)).

The Applicant also had claimed that his suspension without pay for over 10 months was unauthorized, improperly motivated and exceeded the Respondent's discretionary authority. In that connection, the Tribunal recalled that the Applicant had been suspended without pay in July 1996, pending the resolution of charges of misconduct, and on 7 April 1997 the Applicant had been informed that his suspension would be converted to suspension with pay, retroactive to 1 December 1996. The Applicant had been summarily dismissed with effect from 19 July 1997, which meant that for almost five months he was in effect suspended without pay.

The Tribunal recalled staff rule 110.2 and administration instruction ST/AI/371, which provided that a staff member should be suspended from duty during an investigation and pending completion of disciplinary proceedings with pay, unless there were "exceptional circumstances" calling for suspension without pay. The Respondent had claimed that the allegations were sufficiently serious, and the evidence substantial enough, to constitute "exceptional circumstances" in the light of the Applicant's position as Chief Finance Officer of UNFICYP. Moreover, the Respondent expected that the investigation and the subsequent JDC proceeding would have been completed sooner than they were.

However, the Tribunal held that the Respondent's decision to suspend the Applicant's salary for an extended period of time was unjustified. The qualifying factors surrounding the investigation made it clear that there were no circumstances which could be categorized as exceptional, and the Respondent had failed to take measures to resolve the matter expeditiously. The Tribunal therefore ordered the Respondent to pay the Applicant an amount equal to six months of his net base salary as compensation for the denial of due process, and rejected all other pleas.

7. JUDGEMENT NO. 942 (24 NOVEMBER 1999): MERANI V. THE UNITED NATIONS JOINT STAFF PENSION BOARD[9]

Non-application of the cost-of-living differential factor in calculation of the initial local-currency deferred retirement benefit—Provisions (of pension adjustment system) should be read together and not in isolation—Exceptions should be narrowly construed—"Natural and ordinary" meaning of words—Use of prepara-

tory work and circumstances for interpretation purposes—Vienna Convention on the Law of Treaties—Effect of practice on the interpretation process—Tribunal cannot legislate—Question of financial implications for the Organization

The Applicant, born on 31 December 1940, was employed by the International Maritime Organization (IMO) in 1964, and transferred to the United Nations on 8 January 1973. He separated from service on 26 August 1993. As a participant in the United Nations Joint Staff Pension Fund, the Applicant, who was residing in Switzerland, requested, on 30 October 1995, that he commence receiving payment of his deferred retirement benefit in the local currency as from 1 January 1996, i.e., after reaching age 55.

Subsequently, the Applicant appealed a decision by the Standing Committee of the United Nations Joint Staff Pension Board that the cost-of-living differential (COLD) factor did not apply in the calculation of the initial local-currency amount of the Applicant's deferred retirement benefit. The COLD factor was applied to those who did not defer their retirement benefit.

In considering the matter, the Tribunal understood its task as interpreting the provisions of the pension adjustment system, and recalled its rule of interpretation in Judgement No. 656, *Kremer and Gourdon*, (1994), that it must construe the relevant paragraphs in relation to the pension adjustment system as a whole.

In that regard, the Tribunal noted that the relevant provisions were paragraphs 1 to 6, 17 and 27 of the 1992 edition of the pension adjustment system. Paragraph 1 stated what the Tribunal referred to as a general principle, in that pension adjustment was intended to ensure that the pension benefit never fell below the "real" value of the United States dollar amount and to preserve its purchasing power as initially established in the currency of the recipient's country of residence. Paragraph 4 contained another guiding principle, as well as the introductory phrase that gave rise to conflicting interpretations: "*Except as otherwise* noted, the pension adjustment system applies to, deferred retirement" (emphasis added). The Respondent had argued that the rules for deferred benefits were "otherwise noted" in paragraph 27, which was a specialized provision that governed more general provisions under the rule *generalia specialibus non derogant*. The Tribunal noted that, like all exceptions, the quoted language should be narrowly construed. Moreover, the Tribunal found that paragraph 27 addressed very limited aspects of deferred benefits, specifically dates for certain calculations, without changing the basic benefits.

The Tribunal further noted that the words "adjusted dollar amount" used in the pension calculations, in paragraph 27, were undefined, and that in interpreting the text their "natural and ordinary meaning" should be employed. (Cf. Judgement No. 852, *Balogun*, (1977).) That followed general international practice, as expressed in the Vienna Convention on the Law of Treaties (article 31, paras. 1 and 4).

The Tribunal, in its interpretation of the pension adjustment system, also was of the view that another interpretation was more reasonable, and further pointed to preparatory work and the circumstances surrounding the conclusion of the text. As the Tribunal recalled, article 32 of the Vienna Convention provided for recourse to supplementary means of interpretation to confirm the ordinary meaning of the text or to determine the meaning when the usual route left the meaning "ambiguous or obscure", or led to a result which is "manifestly absurd or unreasonable". While the pension adjustment system was not a treaty, the Tribunal recognized that the Vienna Convention on the Law of Treaties was a statement of generally accepted rules for interpreting international documents. In the present case, the Tribunal was of the

opinion that there was no clear and unequivocal indication in the record before it, including the preparatory work and the circumstances surrounding the 1983 amendments to the pension adjustment system, that the General Assembly had intended to change the pension adjustment system to discriminate against those who deferred their benefits, had a reason for treating them differently or was clearly presented with the option of doing so.

The Tribunal, noting the International Court of Justice advisory opinion of 23 October 1956,[10] also considered the use of practice in its interpretation task, stating that it was customary in international statutory interpretation to do so. Furthermore, article 31, paragraph 3 (*b*) of the Vienna Convention on the Law of Treaties provided that in addition to the text any subsequent practice in the application of the treaty which established the agreement of the parties regarding its interpretation should be taken into account. However, in the present case, the Tribunal found that the practice of the Respondent in excluding the COLD factor was not representative of the intention of the General Assembly. Practice should be followed only if it was not contrary to an international document, and here the practice of the Respondent was contrary to what the Tribunal found to be the meaning and scheme of the pension adjustment system.

The Respondent had argued that the conflict in dates was proof that paragraph 27 excluded the COLD factor and that any other interpretation would be impossible to implement because of the conflicting dates. The Tribunal recognized this conflict but did not find it a ground for denying benefits that the rules provided. In this case the manner of the implementation of the pension adjustment system, given the conflicting dates, was not within the province of the Tribunal, which had the power to interpret but not to legislate. In that connection, the Tribunal cited previous judgements explaining the boundaries of its responsibilities with regard to the complexities of the pension adjustment system (cf. Judgements No. 546, *Christy et al.* (1991); No. 514, *Maneck* (1991); and No. 589, *Shousa* (1993)).

As to the possible negative financial impact of the Tribunal's interpretation of the pension adjustment system, the Tribunal noted that such a consideration could not affect its decision regarding the correct interpretation of the system. However, with regard to existing beneficiaries under the deferred benefit system, the Tribunal believed that the statute of limitations had run on similar applications.

The Tribunal decided that the COLD factor was applicable to the deferred retirement benefits of the Applicant, retroactive to the date of first payment, and rejected all other claims.

B. Decisions of the International Labour Organization Administrative Tribunal[11]

1. JUDGEMENT NO. 1787 (28 JANUARY 1999): IN RE GRAMEGNA V. INTERNATIONAL ORGANIZATION FOR MIGRATION[12]

Abolition of post and non-appointment to new post—Duty of the Organization to find alternative post—Issue of Organization giving reasons for adverse decision affecting staff member—Selection criteria must be objective and clear—Limits to exercise of discretion in selection decision

The complainant, of Chilean nationality, had been on the staff of the International Organization for Migration (IOM) since 1983, initially as chief of division at grade P.5 in the Department of Latin American Programmes, and later given responsibilities at grades P.4 and P.5. At the material time, he was serving at headquarters in Geneva as chief of division in the Department of Planning, Research and Evaluation at grade P.5.

The organization carried out a comprehensive programme of reform in 1997 and replaced the complainant's department with the new Department of Programme and Fund-raising Support. It revamped existing posts or created new posts in the Professional category and invited staff to apply. The complainant applied for the P.5 post of chief of the Programme of Support Division, as well as an additional five posts, but was not successful. Subsequently, by a letter of 16 January 1998, the Director-General informed him that he was to be chief of mission in Bangkok.

The complainant appealed the decision to select another staff member for the post of chief of the Programme of the Support Division, and the Joint Advisory Review Board found in his favour; however, the Director-General, on 12 March 1998, rejected his appeal. He appealed that decision to the Tribunal, claiming that (*a*) the organization had made mistakes of law and of fact in choosing a candidate who did not have the qualifications listed in the notice of vacancy; (*b*) the organization had acted in breach of its duty to find him another assignment after doing away with his post, and had not even told him of its abolition; and (*c*) the organization had failed to state the reasons for the impugned decision.

In consideration of the case, the Tribunal rejected the complainant's second plea, explaining that although the organization had a duty to make efforts to place him suitably, he had no right to preference for any particular post, the less so since other staff members were in the same situation as he, i.e., their posts had been abolished.

The Tribunal also rejected his third plea that the organization had failed to explain the impugned decision. As the Tribunal observed, when an administrative authority rendered a decision which was adverse to a staff member, it was obliged to reveal the reasons for it, but when a choice was made between candidates for selection to a post the reasons for the choice need not be notified at the same time as the decision.

As regards to the complainant's appeal concerning the other staff member selected for the post of chief of the Programme of Support Division, the Tribunal recalled that the relevant vacancy notice had listed as "desirable" the qualifications of an advanced university degree, preferably in political or social science or economics; at least 15 years' experience in the field of migration, assistance to refugees, project development and technical cooperation programmes; and "good knowledge" of English and French "and/or" Spanish, a "good knowledge of another European language [being] a distinct advantage". The Tribunal noted that the Joint Advisory Review Board considered that the complainant, having a doctorate in sociology, and besides Spanish, his mother tongue, a sure grasp of English and French and a knowledge of some Italian, as well as years of experience in the stated areas, should have gained the post. The Tribunal also noted that the complainant had pointed out that the individual who had been selected for the post only had a first-level Bachelor of Arts degree, and that although his mother tongue was English, he had but slight knowledge of French and no knowledge of Spanish or any other European language.

The defendant contended that the notice had described the qualifications not as "essential" or the "minimum" but merely as "desirable", an adjective intended to allow wider discretion in gauging attainments and experience.

However, the Tribunal, agreeing with the Review Board, stated that the criteria for assessing the fitness of candidates for a post must be objective and clear. And citing Judgement No. 1595 (in re *De Riemaeker No. 3*), the Tribunal further stated that while the Director-General might exercise some discretion, he could not so utterly discard this criteria as to flout the rules that ensured the proper openness and objectivity of the competition. In the present case, the organization had chosen someone wanting in listed qualifications which, though said to be only "desirable", were in fact essential. Therefore, in the Tribunal's opinion, the competition had fallen short of the standards of objectivity and openness that must govern appointment to a senior post in an international organization. The Tribunal stated that IOM must accordingly follow a new procedure to fill the post properly, and until then take steps to ensure that the unit continued to function.

For the moral injury the complainant had suffered, the Tribunal awarded compensation in the amount of 2,500 Swiss francs, and also awarded him SwF 5,000 for costs.

2. JUDGEMENT NO. 1796 (28 JANUARY 1999): IN RE DE MUNCK V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS[13]

Non-renewal of appointment—Limits to exercise of discretionary decision—Issue of disciplinary proceedings—Importance of due process safeguards

The complainant was recruited by the Food and Agriculture Organization of the United Nations (FAO) on 20 November 1989 under a fixed-term appointment for one year, serving as coordinator of a regional project in Dakar. The organization renewed his appointment several times, and promoted him to grade D-1 on 1 October 1993. His last appointment ended on 31 December 1995.

At a meeting in May 1995, the FAO Representative in Senegal orally informed the complainant that he was to be removed from the project for not keeping office hours, and that the Senegalese also had objected to the complainant's poor time-keeping and absences. At headquarters in Rome, the complainant was given the complaints in writing and he responded in writing. He was dismissed on 31 August 1995, but after lodging an appeal with the Director-General against the decision he was reinstated, but given a different assignment until the end of his appointment. The Appeals Committee concluded that the organization had the right not to renew his contract, but awarded him three months' salary in compensation for the behaviour of the representative in Senegal towards the complainant. The Director-General endorsed the Committee's recommendation, but the complainant refused the offer, claiming that FAO had denied him due process, drawn blatantly wrong conclusions from the evidence and harmed his standing and good name.

In consideration of the case, the Tribunal recalled that the strong line of precedent with regard to both transfer and renewal were at the discretion of the executing head and would ordinarily be subject to review only if the decision was *ultra vires*, or if there was a formal or procedural flaw or a mistake of law or of fact, or if a material fact was overlooked or some obviously wrong conclusion drawn from the evidence or if there was abuse of authority.

Reviewing the evidence, the Tribunal noted that contrary to the assertions of FAO, the complainant had not explicitly admitted to the charges. The assertions rested on nothing but attendance sheets that showed when vehicles entered and left the centre's premises. The Tribunal further noted the letter of the complainant, dated 27 June 1995, to the Director of the Field Operations Division, wherein he maintained that whatever hours he kept, he was working properly and efficiently as coordinator, and that gradually, with the consent of the other staff, he had adapted his hours to the changing pattern of work at the centre: in five years the number of experts on the project team had risen from two to approximately 10, all using the same telephone and fax and photocopying machines in his own office and, for a while, the services of the same secretary. Furthermore, the Tribunal noted that there was no proof that the Senegalese counterpart authority actually had made oral criticisms of the complainant.

However, as the Tribunal observed, there was no irrefutable evidence before it, and the statements by the representative and by the complainant were at odds, and it appeared that the organization's treatment of the complainant was punishment for conduct it disapproved of and for low output. In the Tribunal's opinion, disciplinary proceedings should have been implemented under the circumstances and, as the Tribunal recalled, the representative had acknowledged by implication in the memorandum which had prompted the impugned decisions that disciplinary proceedings were the right course, but suggested waiving them on the grounds that that "might lead to more drastic action".

FAO had further argued that because the project was soon to be wound up, the complainant could not have expected renewal of his appointment, and that as regional coordinator he knew that the second phase of the project would end in 1995 and that financing of the third one was far from certain. However, as pointed out by the Tribunal, the complainant had been stripped of his duties as coordinator on 31 May 1995 and had nothing to do with the start of the third phase, as the organization conceded, which came 16 months later.

The Tribunal concluded that without the safeguards of due process the complainant had suffered action which amounted to a sanction, and that his standing and good name had been harmed, and because he had served the organization long and well the decision of the Director-General must be set aside. The complainant was awarded US$ 75,000 and 20,000 French francs in costs.

3. JUDGEMENT NO. 1805 (28 JANUARY 1999): IN RE HARTIGAN V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS[14]

Denial of compensation for service-incurred total incapacity—"Essential personal needs"—Principles of interpretation—Question of a narrower interpretation—Tribunal cannot set amount of compensation

The complainant joined FAO in April 1969 as a stenographer at grade G.3, and at the material time she was a secretary and held grade G.5. On 16 November 1992, the organization terminated her appointment on the ground of total incapacity for work, and the UN Joint Staff Pension Fund had been paying her a disability pension.

On 13 November 1992, she applied to the organization for compensation for service-incurred total incapacity. She claimed an annuity under FAO Manual paragraph 342.51; "lump-sum compensation" for loss of function, under paragraph

342.53; and "additional compensation" under paragraph 342.54. On 31 October 1993, the organization granted her the annuity, and on 18 June 1996, a lump-sum compensation for 25 per cent loss of function, but refused the additional compensation. The complainant appealed.

In consideration of the case, the Tribunal noted that the dispute turned on the construction of paragraph 342.542, in particular the term "essential personal needs". The paragraph read as follows:

> "Where the injury or illness of a staff member has resulted in total incapacity of a nature that obliges him or her to depend for his or her essential personal needs on the attendance of another person either constantly or occasionally, and this attendance entails expense, additional compensation may be awarded in an amount not exceeding a reasonable cost for such attendance."

The Tribunal recalled that where a text might bear more than one meaning, construction consisted in taking the one that best served the drafter's intent, and that it was improper for a court to stretch the sense beyond what the words would bear. Moreover, the Tribunal recalled that it was a basic canon of interpretation that as far as possible each word would be given its natural and usual meaning, not some uncommon or eccentric connotation.

The Tribunal noted that it appeared on the evidence that the complainant could move her arms and hands but not use them. In other words, she was unable to grip, lift or carry anything, and could not cook or wash dishes, use public transportation unless seated, and even brushing her teeth caused her intense pain. In the opinion of the Tribunal, all those acts made up part of "essential personal needs", and help from someone else was warranted.

In that regard, the Tribunal, disagreeing with the organization's narrow construction of the term "essential personal needs", stated that the term could not in its usual and proper sense be confined to personal cleanliness and movement. The Tribunal concluded that the organization's construction amounted to a mistake of law, and that the English version of paragraph 342.542 provided that additional compensation might be paid where there was dependence on the attendance of someone else for "essential personal needs", and there were no grounds for taking a narrower interpretation.

As the Tribunal could not set the amounts of the additional compensation due the complainant, it therefore sent the case back to the Director-General for a decision on the amounts, to be made within six months of the date of delivery of the judgement. The complainant was awarded 4 million Italian lire in costs.

4. JUDGEMENT NO. 1832 (28 JANUARY 1999): IN RE DURAND-SMET (NO. 2) V. EUROPEAN PATENT ORGANISATION[15]

Non-appointment to post—Res judicata—*Question of a challengeable decision—European Patent Convention—Effect of appealing to wrong body—Rules construed using common sense*

The complainant was seconded in 1980 from service with the French Government to the secretariat of the European Patent Office, the secretariat of the European Patent Organisation (EPO). The Office had employed him since April 1983 in Directorate-General 2, in Munich, and on 1 May 1989 granted him grade A4.

In 1996, the complainant applied for an A5 post as a member of a technical board of appeal; boards of appeal were the last instance in adversarial proceedings for grants of European patents. He was informed by letter of 8 July 1996 that he had been unsuccessful and that another A4 official had gotten the post. On 11 July 1996, the complainant lodged an internal appeal to the President of the Office, who refused the claim and forwarded it to the Appeals Committee. The Appeals Committee was of the view that the claim was irreceivable because it was the Administrative Council, not the President, that made appointments to technical boards of appeal; however, since in the view of the Committee it was a decision of the President's to put names of candidates to the Council, the Committee considered whether the President had acted wrongfully in refusing to name the complainant, and it held that he had not. The President endorsed the Committee's recommendation and dismissed the appeal.

The complainant contended that the President was wrong not to have named him, and that he should be appointed to the post and awarded 250,000 German marks in damages, particularly for the moral injury he argued he had suffered "for years". In the opinion of the Tribunal, it was doubtful whether the complainant had exhausted his internal remedies as to his claim for damages. The Tribunal further stated that the claim was almost identical to the one he had made in his first complaint, which the Tribunal had disallowed in Judgement No. 1559, and that insofar as he was now seeking the damages he was claiming in that complaint, the issue was *res judicata*, and, as for any injury he might have suffered since, the Tribunal saw no reason to depart from its earlier ruling (see Judgement No. 1780 (in re *Kunstein-Hackbarth*)).

The Tribunal recalled that a decision would not be challengeable unless it directly affected a staff member's status in law by determining or altering it; no action would lie if some decision had yet to be taken which the staff member might challenge; and neither appeal nor complaint would be irreceivable if the organization's rules stated that some particular procedure must first be followed, and a staff member could not challenge just one element of a complex procedure but only the decision that was the eventual outcome (see Judgement No. 1694 (in re *Benaissa*)). In that regard, as the Tribunal pointed out, the "proposal" that the President had to make for an appointment to a technical board of appeal was obviously not such a decision. The Council did not have to pick any of the President's nominees and could have asked him to submit other names.

The Tribunal further recalled that an unsuccessful candidate might challenge both the rejection of himself and the appointment of someone else on grounds of form or of substance that touched on his own application or on that of the successful candidate. In the present case, the Tribunal noted that if the Council ruled on rejection it would be odd to let the President do so as well, and a conflict of views would be hard to resolve. The complainant was comparing himself to the official who had won the post on merit, and such a comparison must be made, where need be, by the same authority and follow the same procedure. Therefore, in the view of the Tribunal, the Council alone was competent.

According to the Tribunal, there was no substance to the complainant's arguments for declaring the President competent. Article 11(3) of the European Patent Convention was clear: for members of the technical boards of appeal it was the Council that was the appointing authority, and it was therefore wrong for the President to treat the complainant's appeal as a challenge to the refusal to name the

complainant for appointment when it was in fact an appeal against the decision to appoint someone else. The President was, however, competent to entertain the complainant's other claims, but as explained in the earlier judgement those claims could not succeed on the merits.

The Tribunal further pointed out that a staff member who appealed to the wrong body did not on that account forfeit the right of appeal. Although rules of procedure must be strictly complied with, they must be construed with common sense (see Judgement No. 1734 (in re *Kowasch*)), and any penalty for breaking such a rule must be reasonably fitting. As the Tribunal explained, when there were two authorities that might be competent, it was easy for one to forward a misdirected appeal to the other, and if the staff member filed it in time, even with the wrong authority, then it would be receivable, and that authority would simply forward it to the other one.

The Tribunal concluded that the Council was competent to entertain his appeal, and therefore the impugned decision was set aside, insofar as it related to the complainant's claims challenging the rejection of his own application and the appointment of the other staff member to the A5 post, so that the Administrative Council could reach a decision. The complainant was awarded DM 1,000 in costs.

5. JUDGEMENT NO. 1849 (8 JULY 1999): IN RE GERA V. WORLD HEALTH ORGANIZATION[16]

Recovery of an overpayment—Overpayment should be reimbursed unless unfair or unjust—Question of which United Nations body should be reimbursed—Issue of exhaustion of all internal means of redress—Overpayment precluded an award for moral damages

The complainant had been a staff member of the World Health Organization (WHO) Regional Office for South-East Asia (SEARO) from March 1980 until his retirement on reaching the age of 60 in March 1998. He also had been seconded to the United Nations Interim Force in Lebanon (UNIFIL) for the period from July 1992 to July 1996. His salary and allowances (post adjustment, mobility and hardship) were calculated, authorized and paid by the SEARO Budget and Finance Officer, verified later by the United Nations and reimbursed by the latter to WHO.

However, according to WHO, the complainant's post adjustment had been wrongly calculated by the SEARO Budget and Finance Officer, resulting in an overpayment of US$11,912.11 over the period of four years, and this was not discovered until the complainant had returned to work at SEARO. When negotiations with the complainant over a recovery plan proved unsuccessful, WHO notified the complainant, on 4 February 1997, of its intention to retain an amount due him of $4,857.91 for assignment grant and travel expenses to offset part of the debt, and to deduct $100 per month from his net salary until he retired on 31 March 1998, when he would pay the balance of $5,654.20 as a lump sum.

The Tribunal considered that, in accordance with its jurisprudence, if an official received an overpayment by mistake it should be reimbursed, but WHO should take into account any circumstances that would make it unfair or unjust to require repayment. In the present case, as the Tribunal pointed out, the payment of the complainant's monthly salary and allowances had been made by SEARO on behalf of the United Nations, which had reimbursed it in full. SEARO was therefore owed no money. The Tribunal, rejecting the arguments of WHO, including its claim of a fiduciary position vis-à-vis the United Nations, for recovering the overpayment,

concluded that WHO was not entitled to withhold the grants due or make deductions from salary under rule 380.5.2 since the complainant was not indebted to it.

With regard to the withholding of the arrears of the salary increment of $122.66, the Tribunal noted that the claim had not been made until the matter had been dealt with by the headquarters Board of Appeal, and as the complainant had failed to exhaust the internal means of redress, it was therefore irreceivable.

The Tribunal ordered the decision of 27 March 1998 quashed, with WHO paying the complainant an amount equivalent to the grants of $4,857.91 and the $100 per month retained by WHO, plus interest of 8 per cent per annum. The complainant was awarded $2,000 in costs, but was not awarded compensation for any moral damages, as the Tribunal observed that he had benefited by the overpayment.

6. JUDGEMENT NO. 1851 (8 JULY 1999): IN RE CHEVALLIER V. INTERNATIONAL TELECOMMUNICATION UNION[17]

Non-appointment to post because of age—Non-written rules/practice must be proved

The complainant joined the staff of the International Telecommunication Union (ITU) in the Radio Communication Bureau as a designer at grade G.4 under a first short-term contract covering the period from 23 June 1994 to 31 July 1994, and his contract was regularly renewed until 31 July 1997.

With a view to rationalizing its personnel policy, the Union decided that short-term appointments exceeding six months would be put up for competition. The complainant's post was accordingly announced in a vacancy notice for temporary employment in July 1997. The complainant applied for the post and his application was selected by his first-level supervisor and subsequently by the chief of the Department concerned. However, the deputy chief of the Personnel Department informed the official responsible for the selection that it was impossible to appoint the complainant because as he was 60 years old as of 6 July 1997—he had reached the age limit for employment.

The complainant appealed the decision to reject his application. He recognized that the Staff Rules Applicable to Staff Members Engaged for Conferences and Other Short-term Service did not establish any age limit; however, he also submitted that those Rules referred in their preamble to the Staff Regulations, which must therefore be read in conjunction with the Regulations, which established the age of retirement at 62 (regulation 9.9). He contended that in the absence of a specific provision of the Staff Rules applicable to short-term service, that regulation should have been applied in his case. The Union, on the other hand, contended that its position rested principally on practice.

In consideration of the case, the Tribunal recalled that it was a well-established principle that the existence of written law did not need to be proved: the presumption *juris et de jure* assumed cognizance of written-law. However, non-written rules had to be proved by those who invoked them, and in the present case the Tribunal could not find the slightest proof of the alleged practice of retiring staff at the age of 60.

The Tribunal therefore concluded that, taking into account the complainant's current age, he should instead be paid compensation for the illegal rejection of his application, in the amount of 40,000 Swiss francs, and he also was awarded SwF 4,000 in costs.

7. JUDGEMENT NO. 1854 (8 JULY 1999): IN RE GONZALEZ LIRA V. EUROPEAN SOUTHERN OBSERVATORY[18]

Suppression of post and termination—Right of international organization to restructure—Question of functions of new post being different from the former post—Issue of an alternative post

The complainant joined the European Southern Observatory (ESO) on 1 May 1969, as a local staff member. He was granted an indefinite contract as an administrative assistant at the ESO observatory at La Silla in the Chilean Andes. In 1991, the ESO Council decided to restructure its activities at La Silla in view of the development of the establishment of a Very Large Telescope (VLT) at the Paranal observatory, near the town of Antofagasta, and the restructuring resulted in the complainant's post being declared redundant, effective end of 1992. He was offered a new post of "general administrative assistant" at Antofagasta, which he accepted. At the end of 1995, the complainant was assigned to a new position of general administrative assistant at Paranal reporting to the Administrator in Chile, with certain benefits including, on an exceptional basis, a rent allowance for housing in Antofagasta. Subsequently, a disagreement between the Administrator and the complainant occurred over the rent allowance, and as a result the complainant was warned by the General Manager that he could not increase his house rental in the future without previous authorization and that his conduct had seriously eroded the organization's trust in his capacity to handle financial matters.

Further reorganization took place at Paranal in 1997 and, by letter dated 18 June 1997, the complainant was informed that his post would be suppressed as from 31 July 1997 and would be replaced with a post with functions and responsibilities substantially higher and with different service requirements. It was further stated that after careful study it had been found that there was no other post within ESO which would be suitable for him and that as a result he would be terminated. Shortly thereafter, ESO issued a vacancy notice in respect of the new post of "Paranal Administrator". The complainant appealed, contending that the duties of the new post of "Paranal Administrator" were substantially the same as those of his former post, and that there was no evidence that the question of his transfer to another post had ever been considered.

In consideration of the case, the Tribunal noted that it was not disputed that an international organization had the right to restructure its operations, suppressing posts if necessary and consequently terminating the appointments of staff members, even if they had contracts of indefinite duration. The Tribunal also noted that in such cases the organization was obliged to do its utmost, and in good time, to try to find alternative employment for them.

In reviewing the job description of the complainant's post, however, the Tribunal concluded that not only were the functions virtually identical to the new post, but also that the vacancy notice made no express mention of any need for the Paranal Administrator to have to function "autonomously" in any particular respect, as had been submitted by ESO to the Tribunal. While it was true that the complainant did not have a university degree, which was one of the requirements of the new post, that requirement in itself, in the view of the Tribunal, did not make the functions of the new post different from the old one, and it did not prove that the complainant, who had 28 years of experience with ESO, was unable to perform them. Furthermore, the Tribunal noted that when the complainant had been offered the post of

general administrative assistant in Paranal, it was contemplated that the post would not terminate at the end of the construction phase, but thereafter provide administrative and logistical support for VLT operations in Paranal. Even in 1995, it had been recognized that the complainant had the ability to perform the functions of that post at a higher level of responsibility.

The Tribunal considered that the complainant had thus shown that, prima facie, the functions of the new post were substantially similar to his post, and within his capabilities; and that one of the reasons why he was not selected for the new post was because, as the Joint Appeal Board had concluded, ESO and the Administrator wrongly thought him guilty of a breach of faith or abuse of authority in claiming an increased rent reimbursement. ESO, on the other hand, had failed to prove that the new post did have greater responsibilities; or that it was higher-in grade than the old one, or that its greater responsibilities were recognized by way of higher remuneration. In conclusion, the Tribunal held that there had been no genuine suppression of the complainant's post and that the termination of his contract had been caused mainly by an unjustified loss of confidence in him by the Administrator. Moreover, the Tribunal also held that ESO had failed to prove that it did its utmost to timely find an alternative post for the complainant (Judgement No. 1745, in re *de Roos*).

The Tribunal ordered that the impugned decision be set aside, and as for relief the Tribunal, noting that the complainant had been willing to accept compensation in lieu of reinstatement, exercised its discretion under article VIII of its statute (as in Judgement No. 1586, in re *da Costa Campos*) to allow ESO to choose either to reinstate the complainant or to pay him compensation in a sum equivalent to three times the total gross remuneration paid for the period from 31 July 1996 to 31 July 1997 (in addition to termination indemnities already offered or paid by ESO). The complainant also was entitled to interest on unpaid sums at a rate of 8 per cent per annum as from 3 July 1998, the date of the filing of the present complaint, until the date of payment. The complainant furthermore was awarded $2,000 in costs.

8. JUDGEMENT NO. 1864 (8 JULY 1999): IN RE ANDREWS (CHRISTOPHER) AND OTHERS V. EUROPEAN PATENT ORGANISATION[19]

Denial of expatriation allowance—Question of breach of principle of equality—Distinctions made between categories of staff members must be fair and reasonable—Issue of an imperfect allowance system

The 41 complainants were all employees of the European Patent Office, the secretariat of the European Patent Organisation (EPO). One of them was of German nationality and worked in The Hague; the 40 others were non-Germans and worked in Munich. All claimed the expatriation allowance provided for in article 72(1) of the Service Regulations for employees of the Office (the EPO Administrative Council decided to grant the expatriation allowance in 1990).

The complainants requested the quashing of the decisions of 10 March 1998 whereby the President of the Office, in accordance with the unanimous recommendation of the Appeals Committee, had confirmed his refusal to pay the allowance in question. They also sought payment of the expatriation allowance from the date of their appointment or, subsidiarily, from 1 July 1990, or failing that, either from 23 September 1992 or even from the date of filing of their complaints. They claimed that because article 72(1) provided for payment of the allowance only if the staff member had not already been permanently resident of a country, not of their nation-

ality, for at least three years, the article created, without valid reason, two categories of expatriate staff, and that distinction constituted unjustified discrimination.

The Tribunal, acknowledging that the complaints were partially receivable and that the complainants could challenge their last pay slips within the time limits, concluded that they had failed on the merits. Further acknowledging that the system could be improved, the Tribunal observed that it was in line with legal requirements that the applicable rules should precisely define the notion of "expatriation", and fix a length of residence in the country prior to employment beyond which an employee might not be considered to be expatriate. As the Tribunal had stated in Judgement No. 754 (in re *Metten No. 4*), for there to be breach of the principle of equality "there must be different treatment of staff members who are in the same administrative position. Where the circumstances differ, so may the treatment, provided that it is a fair, reasonable and logical outcome of the difference".

The Tribunal, while noting that the expatriation allowance was intended to take account of certain disadvantages arising from being a foreigner newly installed in a country, considered that fair and reasonable distinctions between the newly arrived employees and those employees who had resided in the host country for a long time must be based on objective criteria, and length of residence prior to employment was just such a criterion. In the present case, the Tribunal was of the opinion that a period of three years' residence beyond which the complainants might not be considered as expatriates would appear reasonable.

The Tribunal also acknowledged that although some members of the Administrative Council were far from considering the system satisfactory and pointed to several inconsistencies as well as the abuses it might engender, and while a rule rigidly establishing length of residence might create "qualification threshold" problems, nevertheless breach of the principle of equality of treatment had not been proved. The Tribunal therefore dismissed the complaints.

9. JUDGEMENT NO. 1870 (8 JULY 1999): IN RE BOIVIN V. EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL AGENCY)[20]

Quashing of appointment decision—Obligation to protect affected official when appointment was quashed—Questions of costs for outside legal counsel—Requirement of an expert opinion—Issue of moral damages

On 20 March 1995, the Eurocontrol Agency put up for competition the post of head of Accounts Payable at its headquarters in Brussels. Mr. Boivin was among the applicants, but was not selected for the post. Shortly afterwards, a post requiring similar skills also became available at the Institute of Air Navigation Services in Luxembourg, and since there was a reserve list of candidates from the selection process for the Brussels post, Eurocontrol did not consider it necessary to issue another notice of competition for the post. Mr. Boivin was selected for the post; however, a Mr. Bodar lodged an internal complaint against his appointment, alleging several procedural flaws, in particular the failure to issue a notice of competition. In response, the Agency set aside Mr. Boivin's appointment, but kept him temporarily on the staff of the Agency, until he was eventually reappointed, on 1 September 1996, through the new competitive procedure for the post.

Mr. Bodar also lodged an internal complaint against that decision, contending before the Tribunal that the matter had not been referred to the Joint Committee for

Disputes. In Judgement No. 1768, the Tribunal had upheld the plea and ordered the procedure to be recommenced from the time at which the breach of due process had occurred. While the case was before the Tribunal, Mr. Boivin successively consulted two different lawyers to submit evidence to the Tribunal in his capacity as an interested third party. Subsequently, on 2 September 1997, Mr. Boivin sought from Eurocontrol, pursuant to article 92, paragraph 1, of the Staff Regulations, reimbursement of his legal costs and compensation for moral injury, because he had learned that the first cancellation of his appointment had been "at the instigation of two Eurocontrol officials".

In considering the merits of the matter, the Tribunal recalled that the quashing of an official's appointment by reason of the action of another official resulted in the obligation for the organization to protect the official from any injury he might suffer from the setting aside of a decision which he had accepted in good faith (see Judgement No. 1359, in re *Cassaignau No. 4*). In the present case, the Tribunal noted that the Agency had protected the complainant against loss of income by granting him remuneration equivalent to that which he would have earned as an official confirmed in his new post, and thus he had suffered no material damage.

According to the Tribunal, the costs for legal counsel and an expert opinion incurred by the complainant as a preventive measure to defend his position in the case concerning the cancellation of his second appointment could not be claimed unless they were costs which the official had good reason to believe were for the sound defence of his case. The Tribunal agreed with the complainant in his retaining legal counsel, after the cancellation of his first appointment, as he could have serious reasons for fearing a further cancellation, despite the reasons put forward by the Agency. However, the complainant was not justified in his need to change legal counsel, as he had done. In addition, the costs incurred in consulting an expert in graphology to prove that the letter of 31 May 1996 had been received by Mr. Bodar on 3 June, and not on 8 June 1996, were found to be immaterial, in the opinion of the Tribunal. Moreover, as the Tribunal noted, when expert opinion was required it was for the Tribunal to order it on its own motion or on the application of another party (article 11 of the Rules of the Tribunal).

As regards the complainant's claim for moral damages, the Tribunal noted that where the impugned decision was not unlawful, compensation was due only in exceptional circumstances, such as where the wrong was especially grave. On the other hand, where the decision was unlawful, the injury suffered need not be especially grave for moral damages to be awarded: it was enough for it to be serious (see Judgement No. 447, in re *Quinones*). In the present case, the two flaws relating to the appointment of Mr. Boivin, in the view of the Tribunal, were imputable primarily to the negligence of the Agency: on the first occasion, the omission to publish the notice of competition, and on the second, the failure to refer the matter to the Joint Committee for Disputes.

The Tribunal therefore concluded that adequate compensation was required, as the personal interests of the complainant had clearly been harmed and there was no reason to doubt the indications provided by him concerning the stress occasioned by those decisions. The prejudice was grave in view of the duration of the uncertainty in which he had been placed concerning the stability of his employment, which had not entirely ceased since then. The Tribunal awarded the complainant 8,000 euros in moral damages, as well as 2,000 euros in costs.

10. JUDGEMENT NO. 1871 (8 JULY 1999): IN RE COATES (NOS. 1 AND 2) V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS[21]

Non-appointment to post—Limited review of selection decisions—Priority criterion in the appointment of staff—Other criteria of geographic distribution and seniority

The complainant, who was of British nationality, joined the staff of FAO in February 1987 as technical adviser for a project executed by the Fisheries Department in Papua New Guinea. His fixed-term contract was renewed on several occasions, the last one having been extended to 31 March 1997. He had been promoted to grade P.5 in 1991.

On 13 July 1995, he applied for a post as Fishery Resources Officer at grade P.4 in the Fisheries Department at FAO headquarters. From the 97 applications received for the post, the Fisheries Department submitted the names of 4 applicants, with the complainant being placed first on the list. In its report to the Director-General, the Selection Committee confirmed the choices made by the Fisheries Department, but changed the order of preference, moving the fourth-placed applicant to second on the list, with the complainant remaining at the top of the list. On 10 May 1996, when examining the Selection Committee's report, the Director-General gave his preference to the second-placed applicant on the ground that he was a national of a country which was "under-represented" on the Professional staff of FAO, while the complainant was a national of a country with "equitable representation".

The complainant appealed the Director-General's selection decision, contending that the decision was unlawful, in that it breached both the Constitution of FAO and its General Rules and Staff Regulations.

In consideration of the matter, the Tribunal recalled that the provisions of the Constitution and the General Rules and Staff Regulations, as well as case law, showed that the Director-General had discretion with regard to the appointment of staff members, which could only be subject to a limited power of review. In the present case, the Tribunal observed that the Director-General had given paramount importance to the principle of geographic distribution, which had resulted in his selecting the applicant who was second on the list recommended by the Selection Committee. In the Tribunal's view, the Director-General was mistaken in that the FAO Constitution clearly stated that "the highest standards of efficiency and of technical competence" were of paramount importance in appointing staff. Consideration of other criteria, including seniority of service and geographic distribution, was only envisaged where several candidates were equally well qualified. It was not contested that the qualifications of the complainant were considered to be more pertinent to the post than those of the other candidates, both by the Fisheries Department and the Selection Committee; moreover, the complainant alone could be considered to be an internal candidate with a certain seniority of service with the organization. The Tribunal thus concluded that the complainant had been wrongly passed over in favour of an applicant whose qualifications were less pertinent and who had no seniority in the organization. The Tribunal awarded the complainant $100,000 in compensation for the injury he suffered, and 8,000 Swiss francs in costs.

11. JUDGEMENT NO. 1872 (8 JULY 1999): IN RE BANDA V. ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS[22]

Termination for unsatisfactory service—Importance of notifying staff of reasons for termination—Staff should be properly warned in time to have opportunity for improvement of unsatisfactory performance

The complainant joined the Preparatory Commission for the Organisation for the Prohibition of Chemical Weapons on 1 August 1993 and, as head of the Personnel Branch, was awarded fixed-term contracts which were renewed until 23 May 1997, when the Preparatory Commission ceased to exist and its powers were transferred to the Organisation for the Prohibition of Chemical Weapons (OPCW), which had just been established. The complainant was awarded a three-year contract as head of the Human Resources Branch with the Organisation, which took effect on 24 May 1997.

However, on 22 July 1997, the Director-General realized that some 80 members of the staff had not signed the individual secrecy agreements to which they were obliged to adhere, and he attributed the blame for this omission to the complainant and two other staff members. The complainant was immediately suspended and a procedure was commenced for termination of employment for unsatisfactory services. His case was examined by the Special Advisory Board, which transmitted its recommendations through the Joint Advisory Board to the Director-General. On 16 October 1997, the decision was made to terminate the complainant's contract after the 60 days' notice. The complainant appealed against the decision to the Appeals Council of the Organisation, which unanimously recommended that the Director-General reverse his decision, which the Director-General declined to do.

Before examining the pleas, the Tribunal recalled that the Special Advisory Board had recommended that the Director-General should terminate the complainant's contract and the Appeals Council had recommended that he reverse his decision, as well as the more mitigated position of the Joint Advisory Board. For the Special Advisory Board, the complainant's full career showed that his performance had been unsatisfactory, including the unacceptable delays in the signing of the individual secrecy agreements, which endangered the confidentiality policy of the Organisation. The Appeals Council, on the other hand, had noted that the impugned decision to terminate the complainant's appointment could only relate to his service for the Organisation itself, that is, to the period from 24 May to 22 July 1997 inclusive. And in that regard, he had not been warned in due time that his services as head of the Human Resources Branch of the Organisation were not considered satisfactory before he was terminated. Between those two extreme opinions, the Joint Advisory Board, which was responsible for transmitting to the Director-General the opinion of the Special Advisory Board, while concurring with the opinion of the Special Advisory Board, specified that the primary consideration which should be taken into account by the Director-General was the fact that the complainant had not taken timely measures for the signing of the individual secrecy agreements, which endangered the Organisation's policy on the matter.

In view of the above, the Tribunal held that it was important to establish the real reasons for which the impugned decision had been taken, as the complainant rightly recalled that international officials had the right to be informed, from the beginning of the procedure, of the grounds which would serve as a basis for the Administration's decision, and that pursuant to the Director-General's administra-

tive directive (OPCW-TS/AD/2), it was provided that, when the Director-General decided to terminate an appointment, the staff member concerned shall be given in the notice of termination "the reasons for the Director-General's decision and the considerations, conclusions and recommendations of the special advisory board". In the present case, the Tribunal noted that the decision taken on 16 October 1997 by the Deputy Director-General, acting on behalf of the Director-General in the latter's absence, did not provide detailed reasons; it had notified the complainant of the decision to terminate his appointment, while assuring him that the decision had been taken "after careful consideration of all the facts, taking into account the recommendations of the Special Advisory Board and of the Joint Advisory Board", without mentioning that the recommendations were not entirely concordant. The Tribunal therefore concluded that the impugned decision was tainted by a flaw which could not be attenuated by the fact that the complainant had been informed on 22 July 1997 of the reasons for which the Organization had set in motion the procedure for the termination of his appointment.

The Tribunal, noting that it was the performance of the complainant from 24 May 1997 which had been taken into account by the Director-General, was of the view that since the procedure that was instigated was not a disciplinary one, but a procedure for the termination of the complainant's appointment for unsatisfactory service, the complainant needed to be informed in due time, either through a negative performance appraisal report or through precise warnings (see, for example, Judgement No. 1484 (*in re Thuillief*). In the present case, the Tribunal noted that the performance appraisal report for the period 1966-1997 had never been completed and the only criticism concerning unsatisfactory service, which related to the signing of contracts of employment and individual secrecy agreements, had been made on 22 July 1997, the very day of his suspension, which meant that there had been no opportunity for the complainant to demonstrate that he was capable of-improving his performance. The Organisation had invoked the internal memorandum sent by the Director of the Administration Division on 1 July 1997 to the complainant, but, as the Tribunal observed, while the general tone of the memorandum was critical, it did not contain any warning permitting the complainant to believe that his professional competence was being challenged less than two months after his appointment for three years.

The Tribunal concluded that the impugned decision must be set aside because it did not provide the complainant with the guarantees that were due to international officials threatened with the termination of their appointment for unsatisfactory service. The Tribunal considered that there was no reason to order the reinstatement of the complainant, nor to set aside the decision to withhold a step increment effective 1 August 1997, but instead ordered the Organisation to pay the complainant an amount equal to the salary and benefits that he would have received had he remained in service at his grade and step between the date of the termination of his appointment and 23 May 2000, the date of the expiration of his contract. He also was awarded 6,000 euros in costs.

12. JUDGEMENT NO. 1878 (8 JULY 1999): IN RE LIMAGE (NO. 3) V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION[23]

Summary dismissal—Tribunal's review of the proportionality of a disciplinary measure—Importance of notifying staff member of precise charges of serious misconduct—Role of Joint Disciplinary Committee—Issue of previous similar

behaviour of staff member being included as grounds for dismissal—Question of behaviour rising to level of "serious misconduct"—Responsibility for shortcomings of Appeals Board

By its Judgement No. 1639 of 10 July 1997, the Tribunal set aside the decision of the Director-General of 4 October 1996 summarily dismissing the complainant, and the matter was remitted to the Director-General for a new decision in accordance with due process. There was also a further judgement: No. 1748, concerning the execution of Judgement No. 1639.

Subsequently, on 4 August 1997, the Director of the Bureau of Personnel wrote to the complainant asking her to "show cause" within seven days of receipt why an appropriate disciplinary measure should not be taken against her following her serious misconduct towards Mr. Rissom, as reflected in his "note for the record" of 19 May 1995, a copy of which was annexed, and which the Director stated had been "corroborated in its essential particulars" by his secretary. Mr. Rissom's note gave an account of events beginning on 27 April 1995, with particular emphasis on an incident on 17 May 1995 and a phoned apology that evening from the complainant. The Director added that the Director-General would take an appropriate decision upon receipt of her reply or, if none was received, within seven days.

By letter dated 9 September 1997, the Director of Personnel informed the complainant that the Director-General had taken into consideration her reply of 11 August 1997, and that he had noted that she did not deny having insulted Mr. Rissom and said the Director-General had concluded that her conduct constituted extremely serious misconduct, as she had accused her colleague of being a fascist and a Nazi. She was further informed that she was dismissed summarily with effect from 15 September 1997 or the date of receipt of the letter, whichever was earlier. On 11 September, the complainant lodged an appeal with the Appeals Board, which unanimously recommended that the Director-General reconsider his decision and, taking into account the mitigating circumstances, impose a lesser penalty. By a letter of 12 August 1998, the Director-General informed the complainant that he had decided to maintain the decision for the reasons already given in the letter of 9 September 1997 and in the Administration's detailed reply of 31 December 1997 to her appeal.

In consideration of the matter, the Tribunal recalled that the proportionality of the disciplinary measure to an offence was within the discretionary authority of the Director-General; and the Tribunal could only interfere with it if it had been taken without authority, violated a rule of form or procedure, or was based on an error of fact or of law, or if essential facts had not been taken into consideration, or if it was tainted with misuse of authority, or if a clearly mistaken conclusion had been drawn from the facts.

In the Tribunal's opinion, the Organization once again had denied due process to the complainant. The Tribunal observed that the letter of 4 August 1997 referred to her "serious misconduct" towards Mr. Rissom as reflected in his note and corroborated by his secretary. In the view of the Tribunal, it was not acceptable that a staff member accused of serious misconduct had to abstract from a narrative account the essence of the allegations against him or her.

The Tribunal further observed that the essence of the accusation was that the complainant had conducted herself towards Mr. Rissom in the incident on 17 May 1995 as described in Mr. Rissom's note and that this amounted to serious misconduct warranting summary dismissal under staff regulation 10.2, and the Director-General could not impose disciplinary measures other than censure or summary

dismissal without referring the case to a Joint Disciplinary Committee. Therefore, whether the alleged conduct amounted to serious misconduct as opposed to unsatisfactory conduct under staff regulation 110.1 was an issue to be decided, and it appeared from the letter of 4 August 1997 that, if the facts in Mr. Rissom's note were true, the question of serious misconduct had already been established in the opinion of the Director-General.

The Tribunal observed that the impugned decision of 12 August 1998, maintaining the complainant's summary dismissal, referred to the reasons already set out in the letter of 9 September 1997 and in the Administration's detailed reply to the complainant's appeal of 31 December 1997. That reply, which was summarized in the report of the Appeals Board, referred to previous incidents involving the complainant and stated it was not the first time she had behaved in such a manner. However, since her past behaviour was not mentioned in the letter of 4 August 1997, it could not be considered as partly justifying her dismissal. In the view of the Tribunal, that was a serious error and the organization had compounded it by giving an account in the reply to the present complaint.

The Tribunal, recalling that according to regulation 10.2 only serious misconduct could give rise to summary dismissal, stated that while the complainant's conduct was not such as to be expected from an international civil servant, it was not so serious as to warrant summary dismissal. Her words were intemperate, spoken in the heat of the moment to a superior, and her insulting Nazi salute, which was particularly hurtful to Mr. Rissom, a German, was unacceptable. On the other hand, an apology had been offered the same evening and again the next morning and a written acceptance had been generously given by Mr. Rissom. In the opinion of the Tribunal, qualifying the incident as serious misconduct justifying summary dismissal would be a clearly mistaken conclusion to draw from the facts. The Tribunal therefore concluded that the disciplinary measure imposed was so disproportionate as to amount to a mistake of law.

The Tribunal further considered that it was not acceptable that the organization, in its defending against the present complaint, disclaimed all responsibility for any alleged shortcomings of the Appeals Board. In that regard, the Tribunal recalled that the Director-General was obliged under regulation 11.1 to "maintain an Appeals Board to advise him", and time limits were laid down for filing and forwarding pleadings, and these could be extended by the chairperson with the agreement of the Director-General. In the Tribunal's view, if the machinery was not working smoothly a staff member's right to have an appeal dealt with in accordance with the Staff Regulation and Rules was affected.

As the complainant had made serious accusations about the conduct of the appeal procedure which could only be dealt with by inviting a response from the Board, the Tribunal decided that, rather than delay matters by postponing the present judgement to enable that to happen, it would give the complainant immediate satisfaction. It concluded that the complainant had been denied due process and that there had been a lack of proportionality in considering the incident as serious misconduct. The impugned decision was set aside, and the organization was ordered to reinstate the complainant in her former post or another post corresponding to her grade and qualifications, with retroactive effect to the date of separation from service. She would receive all pay to which she was entitled from that date and her pension rights accordingly would be restored. She also was awarded $10,000 in damages for moral injury and $4,000 for costs.

13. JUDGMENT NO. 1881 (8 JULY 1999): IN RE GOODE V. INTERNATIONAL LABOUR ORGANIZATION[24]

Non-renewal of contract—Tribunal review of discretionary decision not to renew—Issues in internal complaint which were logically inseparable should not be split—Issue of prejudicial comments made during decision-making process—Staff member must be allowed opportunity to comment on unflattering information submitted to decision-making body

The complainant was engaged as a senior research officer with the International Labour Organization with effect from 15 December 1996. In accordance with the applicable staff rule, the first two years of his appointment, which was initially for one year, were to be probationary. A probationary employee's first performance appraisal was supposed to take place after nine months. In the complainant's case, his first performance appraisal report, prepared by his first-level supervisor, took place eight and a half months after his appointment, and was extremely unfavourable. After being reviewed by the Department Director and by the Reports Board, the report reached the Director-General who, on 11 December 1997, decided that the complainant's contract, originally due to expire on 14 December 1997, instead of being renewed to allow for the completion of the normal probationary period of two years, should only be extended to 31 July 1998.

The complainant filed a complaint to the Director-General on 9 February 1998. This internal complaint was divided into two parts by the organization. The Director of Personnel told the complainant by a letter of 6 March 1998 that the Director-General was requesting the Reports Board to review both the performance report and the process leading to the original decision not to extend the complainant's contract beyond 31 July 1998, in the light of further inquiry and evaluation and consideration of other relevant material. Then, following receipt of the Board's report, the Director-General would decide whether to renew the complainant's contract until the end of the normal probation period of two years or to confirm the expiration date of 31 July 1998. The consideration of that part of the internal complaint that related to abuse of power and unfair treatment by the complainant's supervisor was deferred to the time when the report was received from the Reports Board.

The Reports Board carried out the investigation requested by Director-General. It sought and obtained a new performance appraisal report and other information regarding the complainant's work and productivity and, inter alia, received representations from the complainant and his superiors. After due deliberation it reported to the Director-General that the additional elements presented to it were not sufficient to make it alter its views and that it was not in a position to recommend an extension of the complainant's contract. The report of the Board, dated 23 April 1998, was submitted to the complainant for his comments, which were submitted, along with the report itself, to the Director-General, who confirmed the non-renewal of the complainant's appointment. The complainant appealed that decision.

The complainant asserted non-compliance by the organization with certain provisions of the Staff Regulations relating to probationary employment. He also complained of unfair treatment by his supervisor and attacked the substance both of the original performance appraisal report and of the revised performance appraisal conducted in March 1998, which formed the basis of the report by the Reports Board. The organization, for its part, took the position that the only issue was the decision not to renew the complainant's original one-year contract. Both the com-

plainant and the organization had indicated that the issue of personal prejudice of the complainant's supervisor was still under investigation.

The Tribunal, however, was of the view that even if the decision not to renew the complainant's contract for a further year was purely a matter of discretion, as contended by the organization, that decision was subject to review by the Tribunal if it was shown that it was procedurally defective or resulted from an abuse of power or from personal prejudice.

The organization contended that there was no evidence to support the complainant's position and that the language employed by the supervisor in her various communications about the complainant was generally moderate and professional in tone. In the view of the Tribunal, the evidence did not bear out this contention, recalling at least one document, a minute addressed to the Reports Board, dated 2 March 1998, which engaged in very strong language to describe the allegations of the complainant. The Tribunal remarked, however, that the issue of personal prejudice was of course likely to turn on far more than whether or not the complainant's supervisor was polite. But as the Tribunal stated, it was simply not in a position to judge the issue since neither party had pleaded it fully.

In that regard, the Tribunal observed that it was wrong for the organization to deal with the complainant's internal complaint by dividing it into two parts, which were in fact logically inseparable. Great cost and inconvenience might have resulted if the Tribunal had found itself obliged to adjourn the matter to its next session in order to have the parties complete their pleadings. However, in the present case, the Tribunal noted that the material produced included a minute of 2 March 1998 addressed by the complainant's supervisor to the Reports Board, containing very unflattering and tendentious language about the complainant.

The complainant asserted that the organization did not deny that the minute was not previously seen by him, and this, in the opinion of the Tribunal, was a clear breach of the rules of natural justice. The Tribunal further noted that the minute was dated just prior to the Reports Board undertaking a new and complete reassessment of the complainant's performance appraisal, and its resulting report was at the very foundation of the final decision reached by the Director-General, which was the decision before the Tribunal. The organization had argued that the supervisor's unflattering comments to the Reports Board had nothing to do with the quality of his work during the period being reviewed by the Board. In the Tribunal's opinion, however, even if it were true, the submission was beside the point. Prejudicial comments made to a body advising the decision maker by one of the parties to a dispute were often irrelevant to the actual substance of the dispute, but they were nonetheless prejudicial. Furthermore, if such comments were made, an opportunity must be given to the other party to respond to them, and by failing to do this the Reports Board had breached its duty of fairness.

The report of the Reports Board being vitiated, the Tribunal concluded that the decision of the Director-General, which was based upon that report, could not stand and must be quashed. The complainant was entitled to be paid his salary and benefits for the period from 1 August 1998 to 15 December 1998, the date on which his term of contract for a normal probationary period would otherwise have expired, less the amount of any occupational earnings during that same period. The Tribunal observed that the complainant was not as yet entitled to any moral damages, as the question of personal prejudice had not been decided.

C. Decisions of the World Bank Administrative Tribunal[25]

1. DECISION NO. 205 (3 FEBRUARY 1999): H. PAUL CREVIER V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT[26]

Claim for both unreduced pension benefit and severance payments under amended pension system—Issue of linking pension entitlement with severance entitlement—Question of retroactive change of terms and conditions of employment—Question of reasonableness of conditioning receipt of unreduced pension in forgoing receipt of severance payment —Discrimination not an issue when staff members are in different situations/categories—Use of pension assets—Issue of parallelism in connection with the International Monetary Fund

The Applicant joined the Bank in 1973 and made his career in the Corporate Secretariat. His employment was made redundant with effect from 15 August 1997, at which time he received a lump-sum severance payment equivalent to 22.5 months of his net monthly pay, in accordance with staff rule 7.01. Other benefits also were explained to him, and although his pension entitlement was not specifically addressed it was understood that he would receive pension benefits under Rule of 75, the pension benefit he had selected. However, the Applicant claimed that because he had not been allowed to draw unreduced benefits from the Staff Retirement Plan, as well as severance pay under the Staff Rules, he had been discriminated against, retroactively deprived of compensation for services rendered and denied equitable treatment.

On 15 April 1998, amendments to the Staff Retirement Plan came into effect, the purpose of which was to reorient the pension system to provide for more flexibility, including not penalizing staff for early retirement and facilitating staff mobility. Rule of 50 provided that a staff member in the service of the Bank as at 14 April 1998 could elect to retire on an unreduced early retirement pension if he or she was at least 50 years old, or had at least 1,095 days of service, and had not received a severance payment from the Bank. As was usually the case with the reform of social security pension systems, staff members under an existing plan were "grandfathered" so as to retain all the benefits and rights to which they were previously entitled under the plan.

The Applicant's selection of the Rule of 75 pension resulted in a pension reduction of approximately 11 per cent, or an annual pension in the amount of $87,373, rather than the unreduced amount of $98,393. In addition, the Applicant was entitled to and accepted full severance payments in compensation for redundancy, equivalent to a maximum of 22.5 months of his final monthly net salary, or $216,881.25. Prior to his opting for the Rule of 75 and redundancy severance payments, it had been confirmed to the Applicant by management that he would not be entitled to receive an unreduced Rule of 50 pension if he also collected severance payments. The Applicant requested an administrative review of that decision, and in response the Respondent reiterated its position. The Respondent also noted that, because in its view neither the Bank management, the Appeals Board nor the Pension Benefits Administration Committee would have any discretion under the terms of the Staff Retirement Plan to grant the Applicant an unreduced pension, he could proceed directly to the Administrative Tribunal.

The Tribunal first considered whether it was an abuse of discretion for the Bank to link the pension entitlement of a staff member with his or her severance entitlement or whether such matters were entirely unrelated. As the Tribunal noted, while

it was true, as argued by the Applicant, that pensions and severance payments were governed by the different Principles of Staff Employment and that pension funds were kept and managed separately from the Bank's administrative budget—from which severance compensation was paid—it was the objective of both mechanisms to provide financial protection and assistance to staff members upon their separation from the Bank. In that respect, in the view of the Tribunal, they could rightly be regarded as complementary components of an overall employment policy. And that link was not just a matter of theory, but one found in the Staff Rules themselves, as pointed out by the Tribunal.

In addressing the question as to whether, in denying the Applicant the combination of an unreduced Rule of 50 pension and severance payments, the Bank had retroactively changed the terms and conditions of employment, the Tribunal noted that in the context of the pension reform the Bank had not reduced the existing rights of staff members, which was the basic consideration underlying the grandfathering. In that respect, every staff member continued to have every right that he or she had before 15 April 1998. In the Applicant's case, he received a pension under the Rule of 75 to which he had a right, and in addition, because of having been made redundant, he was entitled to the maximum severance payments, which he also received. No retroactive change in the Applicant's terms and conditions of employment had intervened in the present case and, consequently, no retroactive deprivation of compensation for services already rendered could be found, a situation which, if existing, would be contrary to principle 2.1(*c*) of the Principles of Staff Employment and a well-established line of decisions of the Tribunal (see *de Merode*, Decision No. 1 (1981)).

The Applicant had contended that it had been unreasonable and unfair for the Bank to make eligibility for an unreduced pension under the Rule of 50 conditional upon the non-receipt of severance payments. The Tribunal recalled that entitlement to severance payments was part of the terms and conditions of employment, and the Bank's practice up to then had been that persons made redundant were entitled to both severance payments and the same pension to which they would have been entitled as voluntary retirees. In the view of the Tribunal, to make one such element conditional upon the other could not be regarded as unreasonable per se. Every amendment to the Staff Retirement Plan over the years and every one of its benefits had been made conditional upon meeting certain requirements. In cases of redundancy similar to those of the Applicant, making the entitlement to an unreduced pension conditional on the waiver of severance reflected the fact that the unreduced pension met to a large extent the need for financial assistance to which severance pay was mainly directed. In addition, the Applicant had been given the choice of receiving either the enhanced pension or his full severance pay together with the Rule of 75 pension. Therefore, in the opinion of the Tribunal, it was not unreasonable for the Bank to have conditioned the entitlement to unreduced Rule of 50 pension benefits upon the non-receipt of severance.

The argument that the Rule of 50 entailed discrimination between groups within the staff in violation of principle 2.1 of the Principles of Staff Employment also had been made. The Applicant had asserted in that respect that even if he had opted for an unreduced pension in lieu of severance payments he would still have been required to leave the Bank involuntarily, as opposed to other staff members who could make the choice whenever it suited them. However, the Tribunal noted that discrimination was not an issue when staff members were in different situations, and thus would normally be governed by different rules, as was the case in the Staff

Retirement Plan and the Staff Rules. As the Tribunal pointed out, discrimination would occur if only some, but not all, members of a group of eligible redundant staff members were allowed to opt for an unreduced pension under the Rule of 50.

The Tribunal also did not agree with the Applicant's argument that the Bank was using Staff Retirement Plan assets for a purpose other than for the payment of retirement benefits, and that this, consequently, was an abuse of discretion and a *detournement de pouvoir* and *de procédure*. As observed by the Tribunal, firstly, the Rule of 50 was available to all staff members and not only to those made redundant, who would likely constitute only a small proportion of those leaving Bank employment. Therefore, the administrative budget would not be significantly affected by those staff members who met the requirements of the Rule and voluntarily retired. Secondly, the pension fund was used only to pay for retirement benefits and for no other purpose.

The Tribunal concluded that to the extent that existing rights were not affected, as they had not been affected in the Bank's reform, it was permissible for the Bank to provide incentives for staff mobility such as those embodied in the Rule of 50. Moreover, eligible staff members were now provided with the option of retiring under the Rule of 50 even if they had been declared redundant.

The Tribunal also examined the principle of parallelism in the light of the present case. As laid down in *von Stauffenberg* (Decision No. 38 (1987)), parallelism entailed a process of consultations with the International Monetary Fund (IMF), a business rationale for any differentiation in benefits and, if such was the case, to consider whether the Fund's decisions should be followed by the Bank. As explained by the Respondent, the first condition had been met through consultations. The last condition was inapplicable in the present case. In the view of the Tribunal, then, the question was whether there was a justification for a different business rationale on the part of the Bank, and the Tribunal found that there was such a justification. Firstly, the reform had increased the benefits available to staff members by introducing the Rule of 50, and it may be for IMF to consider the convenience of a similar benefit. Secondly, parallelism did not mean that the Bank was tied to IMF policies, but rather that it should consider them as a reference point. And thirdly, the size and mission of the Bank was now entirely different from that of IMF. As the Tribunal observed, the Bank had asserted a need to provide for mobility of its staff and that was justified, not by comparison with IMF, but in consideration of its own reality.

For the above reasons, the Tribunal unanimously decided to dismiss the application.

2. DECISION NO. 211 (14 MAY 1999): SUE C. LYSY V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT[27]

Non-confirmation of permanent appointment and termination—Internal remedies must be exhausted—Treatment of evidence by the Tribunal—Role of the Tribunal in reviewing performance reports—Question of interpersonal relationships—Performance evaluation reports should be balanced—Issue of improper motivation—Importance of first informing staff member concerned of performance evaluation—World Bank's Code of Ethics

The Applicant joined the Bank in June 1977 as a Research Assistant in the Development Economics Department. Thereafter she had a number of other positions, including that of Management Systems Analyst (levels J to 22), Projects Officer

(level 23), Financial Analyst (level 23) and Program and Budget Officer (level 24). In 1995, she held the position of Senior Financial Analyst, level 24, in the Natural Resources, Water and Environment Division. When that assignment became redundant, she began working in the Infrastructure Division of the European and Central Asia Region, Country Department 4 (EC4IN), as a Senior Financial Analyst, grade 24, in January 1996. The terms of a temporary assignment and Mutually Agreed Separation Agreement of 6 March 1996 provided that she would remain in regular work and pay status through 15 July 1997, and that she would begin 22.5 months of special leave from 16 July 1997 through 31 May 1999. The agreement would lapse if the assignment in EC4IN became permanent by 15 July 1997 by mutual agreement or if the Applicant took up a new assignment; otherwise, she would separate from the Bank. The Applicant was to be notified no later than 31 December 1996 whether her assignment in EC4IN was to be made permanent.

There was no dispute that the Applicant's work in EC4IN started off well. Her first assignment was as the lead financial analyst for the Ukraine Electricity Market Development Project, and in the performance effectiveness plan part of the Applicant's 1995 performance report, completed on 26 March 1996, the Division Chief stated that the Applicant had made an excellent start in EC4IN and that she had been able to tackle in a remarkably short time the complexity of the financial situation of several energy companies in Ukraine. The Applicant claimed that problems had arisen in October 1996, after she drew attention to concerns relating to two Bank projects in Ukraine, while the Task Manager of the project strongly disagreed with her views. Subsequently, on 7 January 1997, the Division Chief of EC4IN informed the Applicant that she would not offer her a permanent assignment in EC4IN.

The administrative review not being favourable, on 13 August 1997, the Applicant filed an appeal with the Appeals Committee, claiming that she had been given a very poor performance review and that her employment had been terminated because of her insistence upon making an honest appraisal of the Krivoy Rog Rehabilitation Project, one of the Ukrainian projects she had dealt with. The Appeals Committee issued its report on 29 May 1998 and found there was no evidence of retaliatory or improper motive behind the 1996 performance report. The Committee had accepted that to a large extent the tensions among the Krivoy Rog project team were attributable to the Task Manager of the project, but found that the Applicant was not capable of performing in the way that the Division Chief needed her to perform at that time, in that she was distracted by the hostility of the debate and demoralized by having to use figures she believed were wrong in her analysis. In her application to the Tribunal, the Applicant sought reinstatement to a permanent post.

Regarding the 7 January 1997 decision, whereby the Division Chief had informed the Applicant that she would not be offered a permanent assignment in EC4IN, the Respondent submitted that her claim should be dismissed for failure to exhaust internal remedies. It argued that she had neither sought administrative review of that decision nor appealed the decision to the Appeals Committee. The Applicant had claimed that she had pursued internal remedies, such as mediation. However, in the view of the Tribunal, those steps did not constitute a request for review and were not sufficient to meet the requirement that internal remedies be exhausted. Furthermore, the Applicant had not put forward any special reasons why the Tribunal should consider whether the decision violated the terms of her employment, and there did not appear to be any exceptional circumstances which required the Tribunal to consider that claim.

The materials annexed to her application to the Tribunal consisted of two statements which the Power Engineer and Procurement Expert of the Krivoy Rog project team and the Principal Financial Analyst in EC4IN had sent by e-mail to the Appeals Committee. The Appeals Committee had not used them; the two staff members had given oral evidence before the Committee. The Respondent had requested that those statements be stricken from the record, but the Tribunal was of the opinion that the fact that the statements had been prepared for the Appeals Committee but not used by that body did not prevent the Tribunal from referring to them. The Tribunal explained that it was not a court of appeal from the Appeals Committee. Its proceedings were entirely separate and independent from those of the Committee, and the Tribunal was the only body within the Bank that dealt with complaints judicially, and it did so only on the basis of the evidence before it (see *de Raet*, Decision No. 85 (1989)). Furthermore, the statements in question had been made by persons with appropriate expertise and with knowledge of the Applicant and her work in the Division. Moreover, neither of the staff members had claimed privilege or confidentiality in respect of their statements.

The Applicant's 1996 performance report had contained substantial criticisms of her work for the staff appraisal report on the Krivoy Rog project, and she challenged those criticisms, relying on memoranda and reports from a number of her colleagues to support her claim that her work was sound, and that the criticisms were unfair and an abuse of discretion. The Tribunal noted that while it could not form its own opinion as to the technical quality of the Applicant's work, it could refer to the views that had been expressed by independent experts on those issues, and it could consider whether there was any unfairness in the assessment amounting to an abuse of discretion. In that regard, the Tribunal observed that the most significant independent review of the Applicant's work on the Krivoy Rog project was the report of the Quality Assurance Group, which had been prepared at the request of the Vice-President of the Division, for the purposes of the Applicant's request for administrative review. The Vice-President had carried out the administrative review based on written material, including the QAG report, and, describing the Applicant's performance in 1996 as mixed, had concluded that there was no reason to change her report. It appeared to the Tribunal, however, that the administrative review seemed to dissociate the great difficulties and hostility the Applicant experienced in her dealings with the Task Manager from the actual work she was required to produce. The Tribunal further stated that it did not consider her concerns to be professional issues but rather interpersonal communication problems. The Tribunal considered that while there might have been weaknesses in the Applicant's work, there were also management failings in responding to her concerns and in regard to the Krivoy Rog project itself. That those management failings did contribute to the outcome and to the quality of the Applicant's work was explained by the QAG report, but it was not made clear in the Applicant's 1995 performance report.

The Applicant also challenged the comments in her 1996 performance report concerning her interpersonal and communications skills as being unfair and an abuse of discretion. The Tribunal noted that the Applicant had always been rated well in regard to interpersonal skills, had been with the Bank since 1977 and had a long record of competence and good relationships. The report had stated that the Applicant's emotions affected her productivity, but without indicating any underlying reasons. It did not indicate that the Applicant had raised genuine professional concerns about one particular project, or that they had been treated contemptuously and with hostility. The statements in the evaluation seemed to the Tribunal in the

light of all the circumstances to lack proper balance and to convey an incomplete picture which was unfair to the Applicant.

In the opinion of the Tribunal, a performance evaluation should deal with all relevant and significant facts and should balance positive and negative factors in a manner which was fair to the person concerned. Positive aspects needed to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable (see *Romain (No. 2)*, Decision No. 164 (1997)).

The Applicant had further claimed that the criticisms that appeared in the performance report were improperly motivated. The Tribunal, recalling that a finding of improper motivation could not be made without clear evidence, considered that although there was a degree of inconsistency and mismanagement in the Division Chief's handling of the issues, this lack of balance in the evaluation was not motivated by a desire to retaliate.

The Applicant also claimed that her draft 1996 performance report had been put to Management Review without being shown to her or discussed. The Tribunal, while noting that the draft contained comments which were particularly damaging to the Applicant, and even though the Division Chief informed the Management Review Group that the evaluation was a draft, the failure to conduct the review process in the time specified and to ensure that the Applicant had an opportunity to comment on the draft before it was sent on was in violation of the January guidelines and was not consistent with fair treatment.

Finally, the Applicant claimed that the Respondent had violated the World Bank Group's Code of Ethics by instructing her to use an unrealistically low input price to justify a project which was otherwise not financially viable. In that regard, the Tribunal noted that the Code of Ethics provided that staff members should "provide decision makers with candid analysis", but concluded that the circumstances in the present case were not sufficiently clear to justify a finding that there had been a violation of the Code, as the problem seemed rather to have been that of mismanagement or mishandling of the problem that had arisen concerning the Krivoy Rog project.

The Tribunal concluded that the Bank had failed to treat the Applicant with fairness and impartiality and according to proper process, and unanimously decided to award compensation to her in the amount of $200,000 net of taxes, including costs.

D. Decisions of the Administrative Tribunal of the International Monetary Fund[28]

1. JUDGEMENT NO. 1999-1 (12 AUGUST 1999): MR. "A" V. INTERNATIONAL MONETARY FUND[29]

Retroactive conversion to regular staff and reinstatement—Issue of receivability—Question of deciding merits of claim before examining issue of jurisdiction—Issue of exercising jurisdiction in order to prevent escaping a judicial review—Audi alteram partem—*Question of remedies*

The Applicant was hired by the Fund as a consultant under its Technical Assistance Programme for a two-year period, beginning in January 1990. His letter of appointment provided:

"You will not be a staff member of the Fund and will not be eligible for any benefits other than those specified in this letter."

It stated in addition:

"This appointment can be terminated by you or the Fund on one month's notice, or by mutual agreement."

This basic contract was renewed several times, and apart from increases in the Applicant's remuneration, the terms of his appointment remained unchanged.

In August 1998, the Applicant's department head allegedly informed him that the Fund intended to end his contractual employment, and on 26 February 1999, his final contract expired according to its terms.

The Applicant appealed, seeking, inter alia, conversion of his status to that of regular staff, as of 2 January 1993, and "reinstatement" as a regular staff member. As regards the Tribunal's jurisdiction over his complaint, the Applicant contended that the Fund's classification of him as a contractual employee was an arbitrary administrative act that ignored the facts and should not determine the exercise of the Tribunal's jurisdiction, and the argument that the Tribunal did not have jurisdiction because the Applicant was not a staff member presumed as true the very fact at issue. He further argued that the Tribunal should exercise jurisdiction over his claim because otherwise he would have no opportunity for review on the merits by an impartial adjudicatory body. Furthermore, the Applicant contended that the international administrative law doctrine *audi alterant partem*, i.e., every disputant is entitled to be heard—which was incorporated into the internal law of the Fund—required that the Tribunal exercise jurisdiction over the Applicant's claim.

In consideration of the case, the Tribunal noted that the gravamen of the Applicant's complaint was that, although he had been employed on a contractual basis, the nature and continuity of his work indicated that he should have held a staff appointment of indefinite duration. The Fund in its Motion for Summary Dismissal maintained that the Fund's Employment Guidelines of 1989, while providing that contractual appointees generally should not perform the same tasks as staff members, except on a short-term basis or where individual circumstances warranted, and whereas the Applicant had performed essentially the same functions as regular staff members for over nine years, were intended to provide guidance to the Recruitment Division and Fund departments, but that the Guidelines did not give rise to any legal entitlements on the part of individuals. Furthermore, according to the Respondent, the employment of staff and contractual employees differed with regard to a number of factors, e.g., no geographical distribution restraints on contractual staff, and those employees were not subject to a competitive appointment process as were the Fund's regular staff. Greater flexibility also was afforded to contractual employees, who were exempt from the salary structure that governed the remuneration of regular staff members. In addition, staff members and contractual employees had access to different avenues of dispute resolution: contractual employees had recourse to an arbitration procedure, while staff had access to the grievance procedure and the Administrative Tribunal.

The Tribunal further noted that allocation of personnel functions among the various categories of Fund employment had long been a matter of controversy within the Fund and was currently undergoing revision. Both the adoption of the 1989 Employment Guidelines and the revised 1999 Policy on Categories of Employment had been prompted by concerns that contractual and vendor personnel might have been performing functions for which there was a long-term need and which should

be performed by Fund staff. The Fund in its Motion for Summary Dismissal acknowledged "anomalies in the current system of contractual employment", but maintained that those difficulties must continue to be addressed on a systemic basis rather than through the litigation of individual cases.

Accordingly, the Respondent contended that the application should be dismissed as irreceivable on the grounds that, as a former contractual employee, Mr. "A" did not have standing to bring a case before the Administrative Tribunal; the Applicant was not within the Tribunal's jurisdiction *ratione personae* pursuant to article II of the Tribunal's statute. The Respondent further contended that the application should be dismissed as not falling within the Tribunal's jurisdiction *ratione materiae*, as article II of its statute also limited the Tribunal's subject-matter jurisdiction to challenges by a staff member to the legality of an administrative act adversely affecting him.

In considering the issue of jurisdiction, the Tribunal, citing articles III, IV and XIX of its statute, was mindful that international administrative tribunals were tribunals of limited jurisdiction and might not exercise powers beyond those granted by their statutes. The principal issue raised by the present case, in the opinion of the Tribunal, was whether the nature of the Applicant's allegation on the merits, i.e., that he had been illegally classified as a contractual employee when he should have been hired as a member of the staff of the Fund, required the Administrative Tribunal to exercise jurisdiction over his claim even though its jurisdiction *ratione personae* was limited to claims brought by members of the staff and its jurisdiction *ratione materiae* was limited to challenges to the legality of decisions taken in the administration of the staff. In that regard, the Applicant had requested the Tribunal to look beyond the language of his letter of appointment to determine that he was a de facto member of the staff and, furthermore, the view that the Tribunal did not have jurisdiction because the Applicant was not a staff member presumed as true the very fact at issue.

Thus the Administrative Tribunal was presented with two alternatives: to enforce the language of the contract and deny jurisdiction on the basis of the narrowly drawn wording of the statute of the Tribunal and the express language of the Applicant's letter of appointment; or to first examine the merits of the Applicant's claim, i.e., that he should be accorded the benefits of staff membership based on the nature and continuity of his work, and then decide as the result of that examination whether it might exercise jurisdiction *ratione personae* and *ratione materiae*, despite the language of the letter of appointment to the contrary.

The Tribunal, while citing World Bank Administrative Tribunal Decision No. 15, *Joel B. Justin* (1984), ILO Administrative Tribunal Judgement No. 307, in re *Labarthe* (1977), and United Nations Administrative Tribunal Judgement No. 96, *Camargo* (1965), noted that while international administrative tribunals occasionally had found it necessary to examine the merits of a case before determining whether to exercise jurisdiction, there was also support for the view that jurisdiction might be denied on the basis of the language of the Applicant's contract of employment and the applicable statutory provision. In addition, some decisions had rejected on the merits claims that contractual employees had employment rights beyond those prescribed by their contracts, and still others had come to the opposite conclusion, sometimes taking a broad view of jurisdictional prerogatives. The Tribunal, citing an array of cases of other administrative tribunals, considered that the present case fell to be decided on the basis of the particular provisions of the Tribunal's statute

and its *travaux préparatoires*, and of the specifications of the Applicant's contract, and concluded that it lacked jurisdiction, in view of the express language of that contract, which denied the Applicant staff membership, and of the explicit wording of the statute of the IMF Administrative Tribunal, granting the Tribunal jurisdiction only over complaints brought by a "member of the staff" challenging a "decision taken in the administration of the staff".

In considering the Applicant's argument that it should exercise jurisdiction in this case because otherwise his claim would escape judicial review, invoking the principle of *audi alteram partem*, the Tribunal was of the view that the Applicant's reliance on that principle, as incorporated in the internal law of the Fund, pursuant to article III of the Tribunal's statute, appeared to have been misplaced. As the Tribunal pointed out, the provision 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", did not relate to the Tribunal's jurisdiction, but rather stated what law should be applied by the Tribunal in carrying out its judicial functions in those cases in which it had jurisdiction. Furthermore, while the principle of *audi alteram partem* might supply a standard for judging the legality of a decision of the Fund that came within the Tribunal's jurisdiction, the principle did not determine which decisions were justiciable, nor did it require that jurisdiction of the Tribunal be extended because a claim otherwise might or would escape review of an adjudicatory body. The Tribunal was not free to extend its jurisdiction—beyond its statute—on equitable grounds, however compelling they might be.

At the same time, the Tribunal expressed concern over the practice that might have left employees of the Fund without judicial recourse, a result not consonant with norms accepted and generally applied by international governmental organizations. The Tribunal noted that it was for the policy-making organs of the Fund to consider and adopt means of providing contractual employees of the Fund with appropriate avenues of judicial or arbitral resolution of disputes, such as those over whether the functions performed by a contractual employee met the criteria for a staff appointment rather than those for contractual status.

In the present case, the Tribunal noted that the Fund's Executive Board did establish a Policy on Categories of Employment, effective 20 January 1999, which had it been in place in the course of Mr. "A"'s tenure the matter at issue before the Tribunal presumably would not have arisen. Nonetheless, the Tribunal noted that the adoption of the new Policy on Categories of Employment strengthened the equitable basis of certain of his contentions, which the Fund should endeavour to respond to insofar as governing regulations and practical possibilities permitted. In that regard, the Tribunal noted that Mr. "A" had the benefit of the maintenance of group medical coverage for 18 months after the expiration of his contract, without, however, financial contribution by the Fund.

For the reasons stated above, the Tribunal unanimously decided that the Fund's Motion for Summary Dismissal be granted.

2. JUDGEMENT NO. 1999-2 (13 AUGUST 1999): MR. "V" V. INTERNATIONAL MONETARY FUND[30]

Alleged violation of a retirement agreement—Meaning of placing documents under seal—Question of creating future records of former staff member's

performance after a negotiation for deletion of performance rating from electronic database—Boundaries of a "confidential clause"—Importance of Tribunal's enforcement of negotiated settlement and release agreements—Elements of such an agreement—"Strictly confidential" versus "secret"—Lack of sensitivity does not amount to gross negligence—Question of where Fund is liable for actions of Staff Association Committee—Issue of damage to reputation—Effect of Grievance Committee's recommendation before the Tribunal—Question of costs awarded to Respondent for alleged frivolous claims brought by Applicant

The Applicant began his employment with the Fund in 1969, receiving promotions in 1979 and 1986. However, during the later course of his employment, disputes apparently arose regarding his performance and its evaluation, and in May 1996, the Applicant and the Fund entered into a retirement agreement providing for the termination of his career with the Fund, with his early retirement taking effect on 30 November 1998.

Mr. "V"'s separation leave was financed by the Fund's Separation Benefits Fund (SBF), and beginning in 1995 the Fund produced an annual report describing disbursements from the SBF. The report, in describing disbursements from the SBF, also identified characteristics of recipients, but did not state their names, and included the reasons for their separation from service. In accordance with established practice, the report was transmitted to Fund Management, the Personnel Committee, the Ombudsperson and the Chairman of the Staff Association Committee. Mr. "V" claimed that he had come across several copies of the 1996 SBF report, which had been placed on an information desk, while visiting the office of the Staff Association. It was then that he first became aware of the existence of the report and that it contained information about himself, and he filed an application contending that the Fund had breached the retirement agreement it had entered into with him.

The Applicant claimed that the Fund had breached the retirement agreement by disseminating in the 1996 SBF report information that reflected adversely on his performance, i.e., that gave as the reason for his separation from service that he was unable to produce work that met departmental standards. The Applicant argued that three specific provisions of the agreement had been breached by the Fund: (*a*) the sealing of the 1992 and 1994 performance reports and destruction of all copies thereof; (*b*) the removal of the 1992 and 1994 ratings from the "personnel database"; and (*c*) the confidentiality clause.

Regarding the issue of the 1992 and 1994 performance reports, the Tribunal noted that there was no dispute that, as provided for by the agreement, the originals of the Applicant's performance reports for 1992 and 1994 had been placed under seal in the Administration Department and all copies destroyed. The Applicant, on the other hand, explaining that "sealing a document" referred not only to the physical piece of paper but also to its contents, asserted that information contained in the sealed documents must have formed the basis for the entry about him in the 1996 SBF report. The Fund, however, argued that the information regarding the Applicant in the SBF report had been supplied independently of the sealed performance reports, contending that it was the Assistant Director of Administration, who had been involved in negotiating the retirement agreement, that had supplied the information regarding the reason for Mr. "V"'s separation as it appeared in the report.

The Tribunal concluded that paragraph 3 of the retirement agreement did not prohibit the Assistant Director of Administration from preparing an entry in the 1996 SBF report based on his knowledge of Applicant's case. The Tribunal noted

that the Fund had complied with the express requirements of paragraph 3, and further stated that in view of the Fund's rejection of the Applicant's request for "expungement" of his flawed performance reports during the negotiating process of the retirement agreement, the Fund had not undertaken to conceal or obfuscate the broader contours of Mr. "V" 's performance. The Tribunal even questioned whether a public, legally governed institution such as IMF could have properly entered into such an undertaking.

Furthermore, as recalled by the Tribunal, the Applicant did not dispute that his numerical ratings for 1992 and 1994 had been deleted from the personnel database, pursuant to paragraph 4 of the agreement, but he seemed to be under the impression that that provision might have encompassed something more than the electronic records. The Tribunal recalled the negotiating history of the retirement agreement, noting that the Fund had rejected the inclusion of a provision suggested by Applicant's counsel: "The assessment of your performance for 1992 and 1994 shall not be referred to or communicated, orally or in writing, to anyone except as provided in this paragraph." In the view of the Tribunal, that provision, if it had been accepted, might have offered some protection against the creation of future records relating to Mr. "V" 's performance, such as in the SBF report. Furthermore, the Tribunal concluded that nothing in the agreement barred the Fund from relying on knowledge of the Assistant Director of Administration or prevented it from creating, subsequent to the agreement, a report stating that inability to produce work that met department standards was the reason for the Applicant's separation from service.

In considering the issue of the confidentiality clause, the Tribunal noted that paragraph 8 of the retirement agreement provided:

> "The above terms and conditions shall remain confidential and shall not be disclosed by you, either during or after your employment with the Fund."

After reviewing the negotiating history, the Tribunal concluded that, despite disagreement over which party had sought confidentiality, its language suggested that both parties were required to keep confidential the terms of the agreement.

In examining whether that obligation of confidentiality, however, prohibited the Fund from including a comment regarding the Applicant's performance in a "strictly confidential" report of the Separation Benefits Fund, the Tribunal concluded that the confidentiality clause of the retirement agreement, which required the Fund to keep the terms of the agreement "confidential", did not prohibit the Fund from commenting critically on the Applicant's performance in the "strictly confidential" SBF report, the purpose of which was to explain the uses of the Separation Benefits Fund, and which was circulated only to those staff members with a "need to know".

Moreover, the Tribunal was unable to find sufficient support, from either the language of the Agreement or the negotiating history, for the Applicant's contention that it was the intention of the parties to "cleanse" the Applicant's performance record, and that the preparation and circulation of the 1996 SBF report entry relating to the Applicant, therefore, ran counter to that intention. In fact, the Tribunal noted that suggestions by the Applicant to allow for broader protection to his reputation had been rejected by the Fund during the negotiation of the retirement agreement.

The Administrative Tribunal, in reaching these conclusions, explained that it was mindful of the importance both to staff members and to the Fund of enforcing negotiated settlement and release agreements, in which a staff member received special compensation or benefits upon separation from service in exchange for the

release of claims against the organization. Citing World Bank Administrative Tribunal Decisions No. 25, *Mr. Y* (1985), and No. 29, *Alexander Frederick Kirk* (1986), the Tribunal observed that, in enforcing such agreements, international administrative tribunals had looked for exactly the elements present in the present case, i.e., evidence of individualized bargaining and the exchange of consideration as indications that the agreement had been entered into freely and reflected a real balancing and resolution of interests between the parties.

The Applicant complained that the Fund had acted illegally in not disclosing the SBF reporting requirements during the negotiations over the agreement. The Tribunal, citing IMF Administrative Tribunal Judgement No. 1996-1, *Mr. M. D'Aoust* (1996), concluded that, assuming that the SBF reporting requirements were relevant information in the possession of the Fund, the Fund had not deliberately misled the Applicant, misrepresented facts or engaged in irregularity of procedure by not disclosing to the Applicant those requirements during the negotiation of the retirement agreement. Rather, those officials could have reasonably believed that those requirements were not in conflict with the terms negotiated in the agreement.

As to the Applicant's claim that the Fund had violated General Accounting Office regulation (GAO) No. 35, which prescribed policies and guidelines governing the security of information in the Fund, including information classification and the handling of classified information, the Tribunal concluded that it was a reasonable act of managerial discretion for the Fund (*a*) to classify the 1996 SBF report as "strictly confidential", and (*b*) to decide that the Fund's Managing Director and others had a "need to know" this information. In the opinion of the Tribunal, the classification as "strictly confidential" appeared entirely appropriate, as that classification level was designed to protect information involving matters of strict personal privacy (e.g., medical and financial information related to benefit entitlements). Furthermore, the only level of information security higher than "strictly confidential" was "secret", a classification to be used only in exceptional circumstances, pursuant to rule 3.04.4. As for the determination as to which Fund personnel had a "need to know", the Fund had explained and documented its rationale for circulating the report to this limited group of individuals. The policy had been undertaken in the interest of promoting transparency of personnel practices and to provide Fund-wide reactions, in response to criticisms that had arisen over the years with respect to the equitable allocation of scarce resources of the SBF.

As to the Applicant's complaint that the Fund had violated the guidelines for the scope and content of the report—specifically, that the names of beneficiaries were to be disclosed only to the Managing Director—and that the report had had the effect of revealing names because the identities of recipients might be deduced from the identifying characteristics provided, the Tribunal noted that in testimony before the Grievance Committee, the Assistant Director of Administration had conceded that the entry pertaining to the Applicant was identifiable on the basis of the information given as to his nationality, departmental affiliation and age, and that, beginning with the 1997 report, in the interest of confidentiality, the annual SBF reports no longer revealed the nationalities of SBF recipients. Nonetheless, the Tribunal was unable to conclude that the possibility that some SBF recipients might have been identifiable in the report that was circulated beyond the Deputy Managing Director constituted a violation of the guidelines governing the preparation of the report.

As to the Applicant's contention that the circulation of the report containing sensitive information about himself was grossly negligent, if not intentional, the Tri-

bunal recalled Decision No. 20 (1996) of the Asian Development Bank Administrative Tribunal, in which that Tribunal had concluded that limited notification within the organization of the suspension of a staff member's dependency allowance as the result of a domestic relations matter was limited to the needs of good administration of the Bank and did not amount to negligent publicity. While in the present case, as observed by the Tribunal, the Assistant Director of Administration, who had provided the information on the reason for Mr. "V" 's separation, would have done well to consider more fully any relevant implications of the retirement agreement, any arguable lack of sensitivity on his part was not grossly negligent.

In addressing the issue of whether the Fund was liable for actions of the Staff Association Committee with respect to its handling of the 1996 SBF report, the Tribunal examined, inter alia, the legal status of the Staff Association. The Tribunal considered that the right of staff members to associate for the presentation of their views to management was guaranteed by the Fund's N rules of the Staff Regulations, but that the Staff Association was a self-governing organization, bound by its own Constitution and By-laws. And while it was true that there was a certain congruency between the interests of Fund management and that of the Staff Association with respect to the SBF report, inasmuch as both shared the twin concerns that SBF resources should be fairly apportioned and that the confidentiality interests of staff beneficiaries protected, that concordance of interests did not afford Fund authority to acts by the Staff Association Committee taken in contravention of those interests. Furthermore, it was clear from the Staff Association's constitutive documents and from its actual work that it acted independently of the Fund, and whatever complaint or remedy the Applicant might or might not have against the Staff Association Committee for its handling of the confidential 1996 SBF report, that complaint or remedy could not be pursued in the Administrative Tribunal, nor might the Tribunal entertain as part of the Applicant's complaint against the Fund all of the alleged consequences of the Fund's circulation of the 1996 SBF report.

Regarding the Applicant's argument that the distribution of the 1996 SBF report had damaged his reputation within the Fund and created conflicting official records, impairing his ability to obtain supportive references in seeking outside employment, the Tribunal noted that the Applicant had produced no evidence to that effect. Furthermore, the Tribunal pointed out that not only was that argument speculative, it also ignored the reality of the Applicant's circumstances. As the Fund had pointed out, it would have been most unlikely for a potential employer to seek references from persons other than those in the Applicant's own department with whom he had worked over the course of his extended career, and the retirement agreement did not prevent such individuals from drawing on their own recollections and evaluations of his performance. Furthermore, the suggestion that circulation of the report had damaged the Applicant's professional reputation also tended to ignore the reality, attested to by the Applicant himself, that "widespread reputational damage in the community" pre-existed the retirement agreement, and while he might have sought to repair that damage through the retirement agreement, the agreement did not serve to obscure completely the fact that, rightly or wrongly, the Applicant's performance was at issue during his career at the Fund, at any rate in its later stage.

The Applicant had raised several issues concerning the Grievance Committee's rejection of his claim. The Applicant's concern that the Tribunal might have been misled by the Grievance Committee's decision was misplaced, in the Tribunal's view. Citing IMF Administrative Tribunal Judgement No. 1996-1, *Mr. M. D'Aoust* (1996), the Tribunal noted that it had decided each case de novo, making its own

independent findings of fact and holdings of law, and had only weighed the record generated by the Grievance Committee as part of the evidence before it. Thus, it would have been difficult for the Applicant to show that he had been adversely affected either by the Grievance Committee's exercise of jurisdiction in his case or by the application of its standard of review.

In considering the Fund's request in the case for the Tribunal to award it costs for defending allegedly frivolous claims brought by the Applicant in the underlying Grievance Committee proceedings, claims which had not been made part of the application before the Tribunal, the Tribunal recalled article XV of its statute, which provided:

> "1. The Tribunal may order that reasonable compensation be made by the applicant to the Fund for all or part of the cost of defending the case, if it finds that:
>
> (*a*) The application was manifestly without foundation either in fact or under existing law, unless the applicant demonstrates that the application was based on a good faith argument for an extension, modification or reversal of existing law; or
>
> (*b*) The applicant intended to delay the resolution of the case or to harass the Fund or any of its officers or employees.
>
> "2. The amount awarded by the Tribunal shall be collected by way of deductions from payments owed by the Fund to the applicant or otherwise, determined by the Managing Director, who may, in particular cases, waive the claim of the Fund against the applicant."

However, because the Fund had not alleged that the Applicant had brought frivolous claims before the Tribunal, the Fund had failed to allege the predicate required for an award of reasonable compensation under the articles. Moreover, the Tribunal disagreed with the Fund's suggestion that article XIV, section 4, of its statute, at issue in Tribunal's Order 1997-1 (Mr. "C"), provided a basis for the relief it sought in the present case. Among other things, the statutory purpose of article XIV, section 4, was to provide for cost-shifting in favour of prevailing applicants, thereby increasing access to the Tribunal for aggrieved staff members, vis à-vis that of article XV, which penalized the bringing of frivolous claims by exacting from the offending party the cost of defending against them, thereby deterring the pursuit of cases that amounted to an abuse of the review process. Accordingly, the Tribunal concluded that there was no basis for it to award costs to the Fund for defending any frivolous claims brought by the Applicant in the Grievance Committee.

The Administrative Tribunal unanimously decided, inter alia, that the Fund had not acted illegally, either with respect to the retirement agreement it had entered into with the Applicant or with respect to any Fund rule or regulation, when it prepared and circulated the 1996 SBF report, in accordance with Fund policy.

NOTES

[1] In view of the large number of judgements which were rendered in 1999 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest and/or set out a significant point of United Nations administrative law have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the four Tribunals, namely,

Judgements Nos. 913 to 944 of the United Nations Administrative Tribunal, judgements Nos. 1784 to 1890 of the International Labour Organization Administrative Tribunal and decisions Nos. 205 to 216 of the World Bank Administrative Tribunal and judgements Nos. 1999-1 and 1999-2 of the Administrative Tribunal of the International Monetary Fund, see, respectively: documents AT/DEC/913 to AT/DEC/944; Judgements of the Administrative Tribunal of the International Labour Organization: 86th and 87th Ordinary Sessions; World Bank Administrative Tribunal Reports, 1999; and Administrative Tribunal of the International Monetary Fund, Judgement Nos. 1999-1 and 1999-2.

[2] Under article 2 of its statute, the United Nations Administrative Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.

The Tribunal shall be open: (*a*) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (*b*) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: International Civil Aviation Organization and International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund, including such applications from staff members of the International Tribunal for the Law of the Sea.

[3] Hubert Thierry, President; Julio Barboza, Vice-President; and Kevin Haugh, Member.

[4] Hubert Thierry, President; and Kevin Haugh and Marsha Echols, Members.

[5] Mayer Gabay, First Vice-President, presiding; Julio Barboza, Second Vice-President; and Chittharanjan Felix Amerasinghe, Member.

[6] Hubert Thierry, President; Julio Barboza, Vice-President; and Kevin Haugh, Member.

[7] Hubert Thierry, President; and Chittharanjan Felix Amerasinghe and Kevin Haugh, Members.

[8] Mayer Gabay, Vice-President, presiding; and Chittharanjan Felix Amerasinghe and Marsha A. Echols, Members.

[9] Hubert Thierry, President; Mayer Gabay, Vice-President; and Marsha A. Echols, Members.

[10] *Judgements of the Administrative Tribunal of the ILO upon complaints made against UNESCO, Advisory Opinion of 23 October 1956, I.C.J. Reports 1956*, p. 86.

[11] 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 1999, 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 Or-

ganization, 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, the International Service for National Agricultural Research (ISNAR) and the Energy Charter Secretariat and the International Hydrographic Bureau. 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.

[12] Michel Gentot, President; Jean-François Egli and Seydou Ba, Judges.

[13] Ibid.

[14] Michel Gentot, President; Julio Barberis and Jean-François Egli, Judges.

[15] Michel Gentot, President; Jean-François Egli and Seydou Ba, Judges.

[16] Michel Gentot, President; Mella Carroll, Vice-President; and James K. Hugessen, Judge.

[17] Michel Gentot, President; Julio Barberis and Seydou Ba, Judges.

[18] Michel Gentot, President; Mella Carroll, Vice-President; and Mark Fernando, Judge.

[19] Michel Gentot, President; Jean-François Egli and Seydou Ba, Judges.

[20] Ibid.

[21] Michel Gentot, President; Julio Barberis and Seydou Ba, Judges.

[22] Michel Gentot, President; Jean-François Egli and Seydou Ba, Judges.

[23] Michel Gentot, President; Mella Carroll, Vice-President; and James K. Hugessen, Judge.

[24] Ibid.

[25] The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for 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 designed or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[26] Robert A. Gorman, President; Francisco Orrego Vicuna and Thio Su Mien, Vice-Presidents; and A. Kamal Abul-Magd, Bola A. Ajibola and Elizabeth Evatt, Judges.

[27] Francisco Orrego Vicuna (a Vice-President) as President; Bola A. Ajibola and Elizabeth Evatt, Judges.

[28] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is empowered to review any employment-related decision taken by the Fund on or after 15 October 1992.

[29] Stephen M. Schwebel, President; Nisuke Ando and Agustin Gordillo, Associate Judges.

[30] Ibid.

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)

CONTRACTS

1. IMPLEMENTING INSTRUMENTS—CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION OF 13 NOVEMBER 1979—FINANCIAL REGULATION 10.5 AND FINANCIAL RULES 110.10 TO 110.24

Memorandum to the Chairman of the Headquarters Committee on Contracts

1. This is in reference to your memorandum dated 9 July 1998, requesting our advice on what the role of the United Nations Office at Geneva Contracts Committee should be in respect of the "implementing instruments", concluded each year since 1990, between the Economic Commission for Europe (ECE) and, respectively, the Chemical Coordinating Centre, located at the Norwegian Institute for Air Research, Lillestrom; the Meteorological Synthesizing Centre-East, located at the Institute of Applied Geophysics, Moscow; and the Meteorological Synthesizing Centre—West, located at the Norwegian Meteorological Institute, Oslo. We also refer to our subsequent discussion with representatives of ECE, and the additional information provided to us on 24 March 1999 by the Deputy Director, ECE Environment Body for the Convention on Long-range Transboundary Air Pollution.

Background

2. The Convention on Long-range Transboundary Air Pollution ("the Convention") was adopted on 13 November 1979, within the framework of ECE, and entered into force on 16 March 1983. Its objectives are, inter alia, "to reinforce active international cooperation to develop appropriate national policies and, by means of exchange of information, consultation, research and monitoring, to coordinate national action for combating air pollution including long-range transboundary air pollution".

3. The Executive Secretary of ECE carries out secretariat functions for the Executive Body of the Convention (article 11).

4. A "Cooperative programme for the monitoring and evaluation of the long-range transmission of air pollutants in Europe" ("EMEP") is carried out as part of the activities under the Convention (article 9).

5. A Protocol to the Convention for "the long-term financing of EMEP" was adopted by the Contracting Parties to the Convention on 28 September 1984 and

entered into force on 28 January 1988 ("the 1984 Protocol"). The 1984 Protocol specifically refers to the three centres as "the international centres of EMEP", responsible for coordinating the monitoring of long-range air pollution in the area covered by EMEP (article 1, para. 4).

6. The 1984 Protocol contains the following provisions relating to the financing of EMEP:

(*a*) Article 2 provides that "the financing of EMEP shall cover the annual costs of the international centres cooperating within EMEP for the activities appearing in the work programme of the Steering Body of EMEP";

(*b*) Article 3 provides that the annual costs of the work programme of EMEP shall be covered by the mandatory contributions, supplemented by voluntary contributions subject to approval of the Executive Body. A "General Trust Fund" was established by the Secretary-General of the United Nations to receive such mandatory and voluntary contributions (articles 1 and 3);

(*c*) Article 5 provides that "an annual budget for EMEP shall be drawn by the Steering Body of EMEP, and shall be adopted by the Executive Body ... (article 5).[1]

7. You enclosed with your memorandum a copy of "Terms of Reference for the International Centres of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe". It is stated in paragraph 1 of the three samples of implementing instruments which you provided to us that these terms of reference were "approved by the Executive Body of the Convention at its fourth session (EB.AIR/GE.8, annex IV)". The three centres are specifically referred to in paragraph 5 of the terms of reference, which set out in detail the terms and conditions under which they are "to carry out the technical and scientific functions assigned to them in accordance with the present terms of reference" (para. 6).

8. We understand from the 27 May 1998 memorandum addressed to you by the Chief, Purchase and Transportation Section of UNOG, that ECE has presented to the UNOG Committee each year since 1990, for information, a report concerning the extension of the implementation instruments, and that the UNOG Committee has only taken note of the extension, without taking any decision.

9. In the 3 April 1998 "Information Note to the Committee on Contracts", prepared by ECE and enclosed with your memorandum, it is stated, inter alia, that "the ECE secretariat has sought and received authority from the Office of the Controller, United Nations Headquarters (memorandum of 14 June 1990), to conclude annual implementing instruments for the EMEP programme on the understanding that all expenditures will be fully covered by assessed contributions from the parties to the EMEP Protocol" (para. 3).

Analysis and advice

10. According to United Nations financial rule 110.17, United Nations Headquarters and local Committees on Contracts are established to render written advice to the United Nations officials designated in the rules (in this case, the head of the UNOG office) on all contracts for the purchase or rental of services, supplies, equipment and other requirements exceeding a specified amount, all proposals for modification or renewal of contracts previously reviewed by the Committees,[2] and such other matters as may be referred to them by the designated officials.

11. The principal function of the Committees on Contracts is to examine and provide advice as to whether proposed contracts are in accordance with the Financial Regulations and Rules of the United Nations and the related procedures, administrative issuances and instructions.

12. The United Nations financial regulations and rules involved are financial regulation 10.5 and financial rules 110.16 to 110.24, on "Contracts and purchases". Their purpose is, essentially, to ensure that United Nations contracts which exceed amounts specified in the Rules and which do not fall under the exceptions also specified in the Rules are awarded through competitive bidding and are made in writing.

13. In our view, the implementing instruments concluded with the centres do not fall within the category of the contracts to be reviewed by the Contracts Committee under the Financial Regulations and Rules of the United Nations, for the reasons explained below.

14. Indeed, we note that each of the implementation instruments enclosed with your memorandum provides, essentially, that the centres will continue to perform their functions for the implementation of the Convention in accordance with the work plan, terms of reference and budget approved by the Executive Body of the Convention, all annexed to the implementation instrument, and will be reimbursed by ECE for such work in accordance with the Financial Regulations and Rules of the United Nations (articles 1 through 4).[3] As we understand it, ECE, as the secretariat for the Executive Body of EMEP, has been authorized by the United Nations Controller to sign the implementing instruments.

15. Under the circumstances, it is our opinion that the implementation instruments do not fall within the purview of the UNOG Contracts Committee.

26 April 1999

LIABILITY ISSUES

2. PILOT PROJECT WITH INTERNSHIPS OF GRADUATE STUDENTS IN PEACEKEEPING OPERATIONS—LEGAL STATUS OF STUDENTS IN THE HOST COUNTRIES UNDER THE STATUS-OF-FORCES AGREEMENTS—LIABILITY OF THE ORGANIZATION

Memorandum to the Chief of Personnel Management and Support Services, Field Administration and Logistics Division, Department of Peacekeeping Operations

1. This refers to the above-mentioned pilot project which was transmitted to us by the Internship Coordinator in the Office of Human Resources Management. It also refers to subsequent correspondence between representatives of the Field Administration and Logistics Division and the Office of Legal Affairs and the meeting held some time ago with representatives of a school or university.

2. We have been informed that some peacekeeping missions have requested the Field Administration and Logistics Division to analyse the possibility of establishing an internship programme in the field. In this context, the school ("the University") has been approached by the Division regarding its possible participation in a pilot project which would be carried out during the summer of 1998. We understand that, pursuant to the project, some three to five graduate students, between the first

and second year of a Master's programme at the University, would be selected to serve unpaid internships in peacekeeping operations for a period of 10 to 12 weeks. The Division has indicated that the functions to be carried out by the interns would be limited to functions in the areas of political, civil and humanitarian affairs and information/media relations. The Division also indicated that such internships would be useful in preparing interns for possible careers in peacekeeping operations.

3. You have requested our views on the project and assistance in drafting appropriate arrangements with the University that would set out the respective obligations and rights of the United Nations and the University in respect of the project.

4. A project of this nature involves many issues that may need to be considered by the appropriate offices, e.g., the political repercussions that might accrue on the Organization vis-à-vis host Governments and international public opinion in general if students are injured or die in peacekeeping operations, or the financial responsibility that the Organization may incur under the project.[4] This memorandum will not address such policy and financial matters, but will limit itself to addressing the following legal issues: (*a*) the legal status of the students in the host countries under the status-of-forces agreements (SOFAs); (*b*) the liability of the Organization in the event the students sustain injuries or die in the performance of their functions in peacekeeping operations; and (*c*) the arrangements with the University.

A. *Legal status*

5. As regards the legal status of the students in a peacekeeping operation and the privileges and immunities to be accorded to them under the SOFA, please be advised that "students" do not fit any of the categories foreseen in the 1946 Convention on the Privileges and Immunities of the United Nations (the General Convention), or in any of the categories set out in the model SOFA. The students cannot be considered as officials, or as military personnel, or experts on mission for the United Nations. Therefore, in order for the students to be accorded the privileges and immunities necessary for them to function in a peacekeeping operation, a policy determination would need to be made on the scope of the protection that would be necessary for the students, which would then need to be negotiated with the host Government. We would emphasize that the host Governments are under no obligation to grant to the students *any* privileges and immunities. Under such circumstances, any privileges and immunities which the United Nations would consider granting to the students, or to any other category of personnel not provided for in the General Convention, will have to be subject to the agreement of the host Government concerned and expressly provided for in the SOFA with the host country.

6. At a minimum, we consider that the students would need to be accorded functional immunity and facilities for their entry into and departure from the host country, including for repatriation in times of international crisis. As you can appreciate, it may not be easy or at all possible to obtain the consent of the host Government to granting functional privileges and immunities to the students. Without such consent, however, the students would have no legal status in the host country and should not be deployed there.

B. *Liability of the Organization for death/injury*

7. Although certain peacekeeping missions may appear to have a more stable or predictable environment than others, for example, those which mainly involve observation functions, there is always an inherent element of risk in all of them. Ac-

cordingly, the United Nations could be exposed to claims for compensation from the students, or their dependants, if they sustain injuries or die during their internship. Such claims for compensation would be based on the fact that the students sustained the injury while they were performing functions under the direct supervision and control of the Organization, and for its benefit.

8. In addition, the activities of the students might expose the Organization to potentially significant liabilities for third-party claims arising from personal injury or property loss or damage caused to third parties. In view of the fact that the students would be performing functions for the United Nations, third parties would assimilate them to employees or agents of the Organization and hold the Organization liable in respect of loss, damage or injury caused by the students. It would therefore be necessary that the University fully indemnify, defend and hold harmless the United Nations from and against all third-party claims arising from the acts or omissions of the students supplied by it. In addition, the University would have to be requested to back up those indemnity obligations with appropriate financial guarantees, e.g., insurance.

9. In addition to the above, the United Nations would have a degree of responsibility for the safety and security of the students during their internship in a peacekeeping operation. To avoid liability, the United Nations should ensure that, from a safety and security standpoint, it extends to all personnel in peacekeeping operations, including the students, the same degree of care and responsibility, including the same evacuation and emergency medical assistance in periods of danger.

C. *Arrangements with the University*

10. In the light of the above considerations, if it is decided to proceed with the pilot project, the arrangements to be concluded with the University would seek to insulate the United Nations from exposure to liability. In addition to the provisions on third-party claims (see para. 8, above), such arrangements would make clear, inter alia, that the students will not be considered as staff or officials of the United Nations, but will remain the responsibility of the University; that while the United Nations may not be directly involved in the selection of the students, it will have the right to accept or reject any student that the University may have selected; and that the United Nations should have the right to terminate the internship of any of the students at its discretion and at any time, without incurring any liability of any nature, including the expenses associated with the repatriation of the student(s).

11. In addition to concluding appropriate arrangements with the University, the students would have to sign an undertaking, confirming, inter alia, that they have insurance covering their personal injury or death, including insurance for damage or loss of their personal effects, and releasing the United Nations from responsibility in the event they incur injury or die during the period of their internship. In addition, the students would agree, inter alia, to follow the Organization's instructions, comply with local law and customs, maintain the highest standard of conduct and integrity, always act with independence, impartiality, objectivity and tolerance, and keep confidential any information obtained by virtue of their functions which is not released to the public.

12. However, we would emphasize that, notwithstanding any provisions to the contrary in the arrangements with the University and the students, the Organization would still carry a certain degree of responsibility in case the students are injured or die during their internship in a peacekeeping operation, since they would

be discharging functions for the benefit of the United Nations and under its direct supervision and control.

24 February 1999

3. DEATH AND DISABILITY CLAIMS—CONTRIBUTORY NEGLIGENCE

Memorandum to the Director of Field Operations and Logistics Division, Department of Peacekeeping Operations

1. Your memorandum of 4 March 1999 on the above subject requested our advice on the issue of contributory negligence as it relates to compensation claims for death and disability sustained by members of military contingents in United Nations peacekeeping missions. In that connection, you forwarded files containing board of inquiry reports on injuries suffered by two soldiers, and the death of another soldier, while they were serving in United Nations peacekeeping missions in the former Yugoslavia. We note that the two soldiers were injured in separate incidents in 1994, whereas the death of another was a result of a traffic accident on 27 July 1997.

2. As you are aware, on 17 June 1997, the General Assembly adopted a system of self-insurance and established uniform and standardized rates for the payment of awards in cases of death or disability sustained by troops serving in United Nations peacekeeping operations (resolution 51/218 E), to be applied to cases arising from incidents after 30 June 1997. In its resolution 52/177 of 18 December 1977, the Assembly adopted the detailed procedures for the implementation of the new system. Thus, the Russian soldier's death would be handled under the new system, while the other two cases would be dealt with under the old system.

3. Under the old system, Governments were reimbursed for payments made to members of their peacekeeping contingents for service-incurred death or injury in accordance with national legislation as certified by the Government's Auditor-General or an official of equivalent position. However, compensation was not payable where the death resulted from the contingent member's gross negligence or wilful misconduct. Under the new system, the United Nations pays a one-time lump-sum award for service-incurred injury calculated as a percentage of the award for death according to the degree of loss of function (resolution 51/218 E). In paragraph 7 of resolution 52/177, the General Assembly requested the Secretary-General "to continue, in the new system, to take into account, when considering all mission-related death and disability claims, that such injury or death should be compensable, unless such injury or death was caused by the gross negligence or wilful misconduct of the injury or deceased member of the contingent". The Assembly further requested the Secretary-General "to include this notion in the aide-mémoire for troop-contributing countries".

4. Accordingly, under both the old and the new systems, once a determination has been made that the death or injury was service-incurred (and was not due to the victim's gross negligence or wilful misconduct), the full amount of compensation is payable. Under neither scheme does ordinary negligence reduce or preclude the payment of compensation.

5. As you have requested our advice only on the question of whether contributory negligence reduces the amount of compensation which would otherwise be payable, we assume that you have concluded that in all three cases the death or

injury was service-incurred. However, in one of the Board of Inquiry reports, which were prepared under the new system, the Board made no findings as to whether or not the death was service-incurred.[5]

6. We also note that none of the boards of inquiry mentioned above found gross negligence or wilful misconduct by the victim to have been a contributory factor in the injury or death. Thus, in all three cases (and subject to the comments in para. 6, above), we believe that full compensation would be payable.

6 April 1999

PERSONNEL

4. OUTSIDE EMPLOYMENT AND ACTIVITIES—STAFF REGULATION 1.2—STAFF RULES 101.2 (*p*), (*q*), (*r*) AND (*s*)

Memorandum to the Assistant Secretary-General for Human Resources Management

1. This is with reference to your request for advice of 9 February 1999, in connection with a letter of 2 December 1998, addressed to the Chef de Cabinet, Executive Office of the Secretary-General, by the Executive Secretary, United Nations Framework Convention on Climate Change. The Executive Secretary seeks approval to accept an invitation to become a founding member for LEAD[6]-Europe, a not-for-profit association under German law, dedicated to the promotion of sustainable development in industrialized and developing countries through educational programmes.

2. I note that, on 7 December 1998, the Office of Human Resources Management provided advice on the matter and identified a number of issues relating to the request which required further clarification. The Executive Secretary has produced a number of arguments in support of his participation in the project. He has also provided the draft Articles of Association of LEAD-Europe, a document which was not available when the Office gave its views.

LEAD-Europe: brief overview of draft Articles of Association

3. Pursuant to its draft Articles of Association, LEAD-Europe is a non-profit non-governmental association to be incorporated under German law for the purpose of promoting sustainable development in industrialized and developing countries by means of educational programmes (article 2). The specific activities of the Association would be as follows:

—To conduct further education seminars and provide computer-aided learning programmes in Europe;

—To cooperate with LEAD-International[7] and other national and regional LEAD chapters;

—To establish an international network to support sustainable development;

—To raise funds within and outside Europe for this purpose (article 2).

4. The association "shall directly and exclusively pursue non-profit purposes as defined in the section on 'Tax-favoured Purpose' of the Fiscal Code (*Abgabenordnung*)". It "shall act altruistically and shall not primarily pursue its own commercial interests" (ibid.). Members of the Association's Board are elected for a period

of three years. The Board appoints the Director of the Association, confirms the appointment, by the Director, of the Association's staff, considers and approves the Association's programmes of activities, approves budget estimates and carries out some other functions (article 8). The members of the Association "shall not receive any payments or profit shares whatsoever" (article 12).

5. I understand from your memorandum and the attached documentation that there exists a close association between LEAD-Europe and the German Government. I note in this respect that the above-mentioned draft Articles of Association do not contain any reference to such ties. Also, it is not entirely clear from the documentation made available to the Office of Legal Affairs whether the Executive Secretary merely would like to participate in the establishment of LEAD-Europe. I assume that he would also wish to participate in its activities by becoming a member of the Board of the Association. The advice set forth below is provided on this assumption.

Applicable administrative rules

6. I understand that the participation of the Executive Secretary in the establishment and work of LEAD-Europe would be in his personal capacity and should be viewed, therefore, as an "outside activity". Staff regulation 1.2[8] contains a separate section governing outside activities of the staff members of the United Nations, which reads as follows:

"*Outside employment and activities*

(*o*) Staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the General.

(*p*) The Secretary-General may authorize staff members to engage in an outside occupation or employment, whether remunerated or not, if:

(i) The outside occupation or employment does not conflict with the staff member's official functions or the status of an international civil servant;

(ii) The outside occupation or employment is not against the interest of the United Nations; and

(iii) The outside occupation or employment is permitted by local law at the duty station or where the occupation or employment occurs."

7. The Staff Rules contain the following provisions regarding outside activities of staff:

"*Outside activities*

*Rule 101.2 (*p*)*

Staff members shall not, except in the normal course of official duties or with the prior approval of the Secretary-General, engage in any of the following acts, if such act relates to the purpose, activities or interests of the United Nations:

(i) Issue statements to the press, radio or other agencies of public information;

(ii) Accept speaking engagements;

(iii) Take part in film, theatre, radio or television productions;

(iv) Submit articles, books or other material for publication.

Rule 101.2 (q)

Membership in a political party is permitted, provided that such membership does not entail action, or an obligation to take action, by the staff member contrary to staff regulation 1.2 (*h*). The payment of normal financial contributions to a political party shall not be construed as an activity inconsistent with the principles set out in staff regulation 1.2 (*h*).

Rule 101.2 (r)

The Secretary-General shall establish procedures whereby staff may seek in confidence clarification as to whether proposed outside activities would conflict with their status as international civil servants.

Travel and per diem for outside activities

Rule 101.2 (s)

Staff members who are authorized by the Secretary-General to participate in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source may receive from the Government, intergovernmental organization, non-governmental organization or private source accommodation and travel and subsistence allowance generally in line with those payable by the United Nations. In such cases the travel subsistence allowance that may otherwise be payable by the United Nations shall be reduced as envisaged by staff rule 107.15 (*a*)."

Legal analysis

8. As a preliminary observation, I note that the Articles of Association of LEAD-Europe appear to be contradictory as to its status. On the one hand, article 2 of the document speaks about the Association's exclusive "non-profit purpose". On the other hand, in the same article, it is indicated that the Association "shall not **primarily** pursue **its own commercial interests**". (emphasis added) This may mean that LEAD-Europe indeed has "its own commercial interests", and that it may pursue them not "primarily" but as a secondary objective. Furthermore, article 12 indicates, inter alia, that members "shall not receive any payments or **profit shares** whatsoever" (emphasis added), indicating that there may be some "profit shares" involved in the activities of LEAD-Europe which would not benefit members but would perhaps be used for financing the Association's activities.

9. The participation of a United Nations staff member in commercial activities of an outside body would clearly be inconsistent with his or her status as an international civil servant. It is possible, however, that the contradictions noted in the preceding paragraph may, perhaps, have resulted from imprecise translation into English of the Articles of Association, which, I assume, were drafted in the German language (the original version was not provided to this Office). I would advise that this matter be clarified.

10. On the assumption that LEAD-Europe does not engage in commerce, there are still a number of potential concerns which should be addressed in connection with possible participation of the Executive Secretary in the activities of that body.

11. First, as correctly indicated in your memorandum, the positions taken in the future by LEAD-Europe on issues dealing with environment and development

may differ from those of the United Nations, thus creating an embarrassing situation for the Executive Secretary of the United Nations Framework Convention on Climate Change and for the Organization as a whole. The related concern is that the appropriateness of his direct involvement in the Association's activities might be questioned by some Member States.

12. Second, as explicitly indicated in article 2 of the Association's founding act, LEAD-Europe will engage in fund-raising. This Office has consistently advised against United Nations staff being involved in third-party fund-raising in view of the risk of jeopardizing the Organization's privileges and immunities. The underlying concern is that, should problems arise during the course of fund-raising activities (for example, the improper solicitation of funds, the management of funds, third-party claims or difficulties with the taxation authorities), the staff member involved would be exposed to the risk of litigation, which might indirectly implicate the privileges and immunities of the Organization.

Advice

13. As advised by this Office on many similar occasions in the past, the decision of the Secretary-General whether to grant the Executive Secretary's request is a policy decision that will involve consideration of the relevant provisions of staff regulation 1.2, and corresponding staff rules, taking into account the concerns set out above.

25 February 1999

5. MEANING OF THE TERM "ADMINISTRATIVE DECISION"— STAFF REGULATION 11.1

Letter to the Executive Secretary of the Joint Inspection Unit in Geneva

I refer to your letter of 28 June 1999, requesting an "official definition" by the Organization of the term "administrative decision". You requested that, if there is no official definition, we provide a definition which could be used officially by the Joint Inspection Unit (JIU).

I note that your request is made in the context of a JIU report on the administration of justice in the Organization. Accordingly, the views set out below concern administrative decisions within the context of United Nations staff regulation 11.1, i.e., the administrative decision which may be appealed. Obviously, national legal systems, as well as legal systems of other international organizations, may have definitions of the term "administrative decision" which may differ from the one offered below.

There is no "official definition" of the term "administrative decision" within the meaning of staff regulation 11.1. However, we believe that the Staff Regulations and Rules, the statute of the Administrative Tribunal and the jurisprudence of the Tribunal would assist us in interpreting the meaning of the term.

Staff regulation 11.1 provides that:

> "The Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against *an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules.*" (emphasis added)

Thus, the administrative decision must concern a staff member's terms of appointment, including all pertinent regulations and rules. Staff rule 111.2 (*a*) provides that:

> "A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date *the staff member received notification of the decision in writing*". (emphasis added)

Thus, an administrative decision must be communicated to the staff member in writing.

The meaning of "terms of appointment" is elaborated in the statute of the Administrative Tribunal which provides, in article 2.1, that:

> "The Tribunal shall be 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 words "contracts" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations." (emphasis added)

A number of judgements of the Administrative Tribunal elucidate what would constitute an "administrative decision". The Tribunal has held that in order for an appeal to be receivable, an administrative decision must be of an "individual character", i.e., an appeal is premature unless the decision is personally applied to the Applicant and, thus, has actual effects on his or her terms of appointment; see Judgement No. 402, *Katz* (1987). In that judgement, the Tribunal found that the appeal by the Applicant against a decision by the General Assembly concerning the suspension of cost-of-living adjustments for the deferred pension adjustment system was premature until the Applicant reached the age when she would commence receiving pension benefits (para. X). Similarly, in another judgement, the Tribunal found that the Applicant, a project coordinator, had no authority to appeal two administrative decisions which were addressed directly to the Applicant's two supervisees in the project and which concerned their terms of appointment (Judgement No. 432, *Lackner* (1988), para. III). The Tribunal also noted in that in order to be appealable, there must be "the presence of imminent or actual injury to the staff member as a result. Mere speculation as to the possibility of future events that might cause injury would ordinarily lead to the rejection of an appeal" (ibid., para. XIV).

The Tribunal has also pronounced on what would not constitute an administrative decision. For example, the Tribunal held that an exchange of information between two senior officials concerning the delay in issuance of a certificate of service to the Applicant could not be regarded as an "administrative decision" (Judgement No. 433, *Ziegler* (1988), paras. XI-XIII). In *Lackner*, referred to above, the Tribunal found that the Applicant's job description and the project document were not part of his terms of employment and, therefore, any changes in those two documents did not, in itself, constitute non-observance of his terms of employment (Judgement No. 432, para. XIII). The Tribunal therefore found that such changes were not appealable under staff regulation 11.1 (ibid.).

In other judgements, the Tribunal found that the appraisal of the report of the Rebuttal Panel on the performance evaluation report made in respect of the Applicant was an "administrative decision" (see Judgement No. 458, *Silveira* (1989),

and Judgement No. 457, *Anderson* (1989), para. I). Similarly, the Tribunal found that non-acceptance of the recommendation of the Rebuttal Panel in its report constituted an administrative decision falling within the jurisdiction of the Tribunal (Judgement No. 446, *San José* (1989), para. III).

In the light of the above, we are of the view that an "administrative decision" within the meaning of staff regulation 11.1 is a decision by the Administration concerning a staff member's terms of appointment, including all pertinent regulations and rules, which must be communicated to the staff member in writing and which must be personally applied to him or her, thus causing imminent and actual effects on the staff member's terms of appointment.

You may wish to refer to the above definition in the JIU reports. However, I would note that the Office of Legal Affairs has no authority to promulgate "official" definitions of various terms used in the Staff Regulations and Rules or in United Nations administrative issuances, and the above definition is not offered as an "official" definition as such. As it appears from this letter, the question of what is an administrative decision is subject to constant development and is ultimately determined by the Administrative Tribunal in the application of the law in the particular case.

20 August 1999

6. REPORT TO THE GENERAL ASSEMBLY ON MANAGEMENT IRREGULARITIES—PROCEDURES FOR DETERMINING "GROSS NEGLIGENCE"—RECOVERY PROCEDURES

Memorandum to the Director, Management Policy Office, Department of Management

1. I refer to your memorandum of 22 September 1999, requesting our advice concerning the preparation of a Secretary-General's report to the General Assembly on management irregularities causing financial losses to the Organization.

2. Firstly, we wish to note that the issues covered by the Secretary-General's report, dated 3 March 1999, entitled "Management irregularities causing financial losses to the Organization" (A/53/849), the report thereon by the Advisory Committee on Administrative and Budgetary Questions of 11 May 1999 (A/53/954), the reports mentioned in the Advisory Committee report (A/AC.243/1994/L.3 and A/49/418), as well as other reports referred to in those documents are broad and touch upon a wide spectrum of issues relating to the subject matter in question. I trust, therefore, that you are seeking comments on this matter from the relevant offices, including the Office of Internal Oversight Services (OIOS), the Office of the Controller, the Rules and Regulations Unit, the secretariat of the Administrative Tribunal and the secretariat of the United Nations Joint Staff Pension Fund. We will, however, set forth our comments on certain issues that we believe might have a bearing on the draft report.

Background

3. At the fifty-third session of the General Assembly, the Secretary-General submitted a report dated 3 March 1999, entitled "Management irregularities causing financial losses to the Organization" (A/53/849). That report "provides an overview of the meaning of management irregularities causing financial losses to the Organization, distinguishes between the different categories of such irregularities and sets

out the applicable procedures for disciplinary actions and recovery" (see the summary on page 1 of the document).

4. The Advisory Committee examined the Secretary-General's report, and its comments thereon are set out in its report to the General Assembly dated 11 May 1999 (A/53/954). The Advisory Committee report provides, inter alia, that:

> "4. In the opinion of the Advisory Committee, the document [A/53/849] is a preliminary report. For example, it does not show clearly what developments have taken place since 1994, when the report on the comprehensive overview by the Secretariat of alleged cases of fraud in the United Nations: study of the possibility of the establishment of a new jurisdictional and procedural mechanism or of the extension of mandates and improvement of the functioning of existing jurisdictional and procedural mechanism (A/AC.243/1994/L.3) was issued. In this connection, the Committee draws the attention of the General Assembly to the report of the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218 A (A/49/418)."[9]

5. In its resolution 53/225 of 10 June 1999, the General Assembly, after examination of the above reports:

> "*Request*[ed] the Secretary-General to submit a detailed report to the General Assembly at its fifty-fourth session, through the Advisory Committee, on management irregularities causing financial losses to the Organization, taking into account the reports (A/AC. 243/1994/L.3 and A/49/418) mentioned in paragraph 4 of the report of the Committee, including procedures for determining gross negligence and the financial and other responsibilities to be incurred by those who have committed such negligence, and preventive measures to identify the risk factors that expose the Organization to management irregularities and measures to improve internal control and accountability." (para. 2)

6. As we understand it, your Office is preparing the report which the General Assembly requested in its resolution 53/225 (hereinafter "the new report"). For that purpose, you have requested this Office to "review the documents A/AC.243/1994/L.3 and A/49/418 in conjunction with the report A/53/849 ..." You also requested our comments on the issue of gross negligence, and any other comments in connection with the preparation of the new report. In addition, you asked that we designate a focal point from this Office in connection with the preparation of the new report by your Office.

The report of the Secretary-General (A/53/849)

7. The Secretary-General's report identifies the following three instances leading to financial losses to the Organization: (*a*) "mistakes"; (*b*) "gross negligence"; and (*c*) "fraud".

8. With respect to the three instances leading to financial losses, we agree with the statements made in paragraphs 5 to 7 of the Secretary General's report that the Organization should not seek recovery from staff members for financial losses to the Organization resulting from their "mistakes" and that, in the absence of gross negligence or wilful misconduct, mistakes should be addressed in the context of performance management. This position is in line with the Organization's policy since 1969, as set out in various legal opinions,[10] that proof of gross negligence or wilful misconduct would be required to justify a staff member being held accountable for

losses to the Organization.[11] This policy was also communicated to the Advisory Committee by the Under-Secretary-General for Management, in 1995.

9. In addition, the Administrative Tribunal has opined on the definition of "gross negligence". In Judgement No. 742, *Manson* (1995), the Tribunal held that:

> "Gross negligence involves an *extreme and reckless* failure to act as a reasonable person would with respect to a reasonably foreseeable risk. Thus, to establish gross negligence, a far more aggravated failure to observe the 'reasonable person' standard of care must be shown than in the case of ordinary negligence." (para. XIV, emphasis in original)

(a) Procedures for determining "gross negligence"

10. Paragraph 8 of the Secretary-General's report (A/53/849) indicates that "procedures need to be established for determining (i) whether there was 'gross negligence' in a specific instance and (ii) what financial responsibility, if any, should be incurred by those who have committed 'gross negligence'." In its resolution 53/225, the General Assembly has requested that such procedures be established.

11. In our view, procedures for determining gross negligence are already in place. Acts of gross negligence could be construed to constitute misconduct under staff rule 110.1. They would thus be handled in accordance with the rules and procedures set out in chapter X of the Staff Rules, on "Disciplinary measures and procedures", further elaborated in administrative instruction ST/AI/371 of 2 August 1991.[12] Those procedures include provisions on the due process rights of staff members under disciplinary proceedings. In this connection, it should also be noted that OIOS, whose mandate includes conducting investigations of possible misconduct or fraud by staff, has its own procedures for carrying out investigations, which are set out in the OIOS Investigations Section manual.

12. We are of the view that it would not be possible or even practical to establish new standards to be applied to cases of alleged gross negligence, and therefore no new procedures for the determination of gross negligence should be proposed in the new report. This is because what constitutes gross negligence is fact-specific and requires a case-by-case analysis of the particular circumstances involved. In this connection, I refer to an opinion of this Office to the Assistant Secretary-General, Office of Financial Services, dated 30 June 1981, published in the *United Nations Juridical Yearbook 1981*, which states, inter alia, that:

> "We have examined the concept of 'gross negligence' and the equivalent concepts as they appear in various legal systems. The various legal systems concur in this description of 'gross negligence'. Few legal systems go into much more detail in the definition, and the determination in each case is reached by the 'fact finder', i.e., jury or judge (analogous to the Property Survey Board in the United Nations administrative context)." (See footnote 31 to the opinion, in *United Nations Juridical Yearbook 1981*, p. 165.)

(b) Recovery procedures

13. The General Assembly has requested that the new report include procedures for determining financial and other responsibility to be incurred by staff members who have committed gross negligence.

14. It is our understanding that, as indicated in the Secretary-General's report (A/53/489), under the existing mechanisms, "virtually all cases of recovery are

achieved" in accordance with staff rule 103.18 (*b*) (ii) (ibid., para. 13). That rule provides that:

> "(*b*) Deductions from salaries, wages and other emoluments may also be made for the following purposes:
>
> ...
>
> (ii) For indebtedness to the United Nations".

As it appears, staff rule 103.18(*b*)(ii) would assume that the amount of indebtedness has already been established, and that the staff member has not yet separated from service, and that the salary and other emoluments of the staff member would be sufficient to obtain full recovery. Therefore, the rule would be effective to seek recovery only once the indebtedness has been established, and only if the staff member is still in service, which may not be the case in instances of gross negligence. (In this connection, see A/53/849, para. 15; A/AC.243/1994/L.3, para. 53; Secretary-General's report of 9 November 1993, entitled "Recovery of misappropriated funds from staff members and former staff members" (A/48/572, para. 5). In addition, as noted in, inter alia, the Secretary-General's report (A/53/849), the rule would not be effective to ensure full recovery if the indebtedness exceeds the amount of salaries and other emoluments.

15. The Secretary-General's report (A/53/849) indicates that there are other rules of the Organization which provide "the statutory regime for the recovery of financial losses caused to the Organization" (para. 2). Those rules are financial rule 114.1 and staff rule 112.3. Financial rule 114.1 states that:

> "Every official of the United Nations is responsible to the Secretary-General for the regularity of the actions taken by him or her in the course of his or her other official duties. Any official who takes any action contrary to these Financial Rules, or to the administrative instructions issued in connection therewith, may be held personally responsible and financially liable for the consequence of such action."

Staff rule 112.3 states that:

> "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction."

16. However, no procedures or mechanisms have been established to implement these rules. Notably, the General Assembly has requested that such procedures be established. In section II, paragraph 3, of its resolution 51/226 of 3 April 1997, the Assembly:

> "*Also request*[ed] the Secretary-General to issue specific administrative instructions to establish clearly the responsibility and accountability of programme managers for proper use of human resources, *as well as sanctions in accordance with staff rule 112.3 for any financial loss suffered by the United Nations as a result of gross negligence, including improper motivation, wilful violation of or reckless disregard for the Staff Regulations and Rules and established policies regulating recruitment, placement and promotion*". (emphasis added)

More recently, in section IV, paragraph 7, of its resolution 53/221 of 7 April 1999, the Assembly:

"*Reiterate*[d] that every staff member of the United Nations shall be responsible and accountable to the Secretary-General, in accordance with financial rule 114.1 and staff rule 112.3".

17. The Administrative Tribunal has also expressed the view that staff rule 112.3 be implemented. In a case in which a staff member had, inter alia, defrauded the United Nations Environment Programme by appropriating more than US$ 40,000 in rental subsidies to which he was not entitled (Judgement No. 358, *Sherif* (1985)), the Tribunal held:

"XIII. If ... the deductions made did not completely settle the Applicant's indebtedness, the Administration may, inter alia, *consider invoking the financial responsibility of those staff members still serving who, through their negligence or complicity, enabled the Applicant fraudulently to appropriate the amounts in question.* It rests with the Secretary-General to decide, in accordance with staff rule 112.3, to require those staff members to reimburse the amounts owed by the Applicant and to deduct them, under the provisions of staff rule 103.18, from their salaries, wages and other emoluments." (emphasis added)

18. In a more recent case also concerning overpayments of rental subsidies, the Tribunal, referring to staff rule 112.3, stated that:

"The Tribunal fully endorses the recommendations of the [Joint Appeals Board] that the negligence of those responsible for these overpayments should be investigated and punished. *The Tribunal finds that the degree of negligence by the Administration manifest in this case is truly appalling and outrageous.* However, it believes that requiring the negligent party to reimburse the loss should not be considered as an alternative remedy to enforcing reimbursement of the United Nations' loss against a staff member who could not, under any reasonable standard, be deemed an 'innocent' recipient of overpayments. To do so, would misconstrue the purpose of staff rule 112.3. Its invocation is a remedy open to the Organization and should not be viewed as relieving the Applicant of his obligation to reimburse what he certainly must have known were overpayments. The Respondent had already determined to recoup only four years of overpayments rather than to seek repayment for the entire six-year period because the Applicant had pointed out that there might have been a 'mistake'. The Tribunal considers that, in the circumstances of this case, it was an appropriate and reasonable exercise of the Secretary-General's discretion and that the decision should stand. Perhaps *it might be appropriate to invoke staff rule 112.3, insofar as the Respondent has agreed to forgo two years of overpayments, to seek the balance against those responsible for the negligent overpayments, if such persons can be identified.*" (Judgement No. 887, *Ludvigsen* (1998), para. VIII (emphasis added))

19. In view of General Assembly resolutions 51/226, 53/221 and 53/225 and the language in the Tribunal's judgements, it would be desirable to evaluate the ways in which financial rule 114.1 and staff rule 112.3 could be implemented, taking into account the due process rights of staff members which will have to be protected in respect of such implementation. You may therefore wish to refer to this issue in the new report.

20. It would appear that the implementation of financial rule 114.1 and staff rule 112.3 as a means of seeking recovery from staff members who have committed gross negligence and/or fraud would be preferable to referring such cases to national

courts. Several issues, such as the assistance of outside counsel which would be required to institute proceedings before the national courts, subjecting the Organization to national provisions on procedure, and the issue of the cost involved in such proceedings in relation to the amount that the Organization can reasonably expect to recover, have already been addressed in paragraph 16 of the Secretary-General's report (A/53/849), in paragraph 57 of A/AC.243/1994/L.3, and in paragraphs 12 to 18 of the Secretary-General's report (A/48/572). In addition, referring cases to national courts for recovery would have serious ramifications for the privileges and immunities of the United Nations. By initiating such proceedings before the national courts, the Organization could allow its internal regulations and rules and policies to be examined by the courts, which might question whether the rights of the person from whom recovery has been sought have been observed. Further, the courts might apply standards to the Organization that are germane to that judicial system.

21. With respect to the issue of recovery, we also note that there was a proposal by the Secretary-General to amend the statute of the Administrative Tribunal to extend its jurisdiction to consider claims of the Organization against staff members (see A/AC. 243/1994/L.3, paras. 49-50, and A/48/572, paras. 6-10). However, as we understand it, no action was taken by the General Assembly on the matter.

22. In addition, attachment of the pension benefits of the individuals was mentioned in paragraph 10 of the Secretary-General's report (A/48/572), as a means of recovery from staff. However, as already noted in that report, such a proposal would require amending the Pension Fund Regulations and raise serious policy questions concerning the independence of the Pension Fund and its assets.

(c) Preventive measures to improve internal control and accountability

23. The General Assembly requested in its resolution 53/225 that the new report also include "preventive measures to identify the risk factors that expose the Organization to management irregularities and measures to improve internal control and accountability".

24. In this connection, you may wish to mention in the new report that the revised article I of the Staff Regulations and chapter I of the 100 Series of the Staff Rules, which came into effect as of 1 January 1999, pursuant to General Assembly resolution 52/252 of 8 September 1998, include certain provisions relating to its subject matter. (Revisions to chapter I of the 200 and 300 Series of the Staff Rules have also been made, to bring them in line with the revisions to article I of the Staff Regulations.) Those regulations and rules, together with the commentary thereto, are set out in the Secretary-General's bulletin ST/SGB/1998/19 of 10 December 1998, entitled "Status, basic rights and duties of United Nations staff members". The relevant provisions are staff regulation 1.2 (*r*), staff rule 101.2 (*a*), staff regulation 1.3 (*a*) and staff rule 101.3 (*a*). Staff regulation 1.2 (*r*) provides that:

> "Staff members must respond fully to requests for information from staff members and other officials of the Organization authorized to investigate possible misuse of funds, waste or abuse."

This regulation "seeks to ensure that staff members clearly understand that they must cooperate with official investigations by the Organization and must supply information on their official actions to, for example, the internal or external auditors". (See the commentary to regulation 1.2 (*r*), set out in the Secretary-General's bulletin ST/SGB/1998/19, p. 23.)

25. Staff rule 101.2 (*a*) provides that:

"Disciplinary procedures set out in article X of the Staff Regulations and chapter X of the Staff Rules may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances."

This provision "will ensure that staff are held accountable through disciplinary procedures for failure to comply with their obligations and the standards of conduct, set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules and all related issuances". (See the commentary to rule 101.2 (*a*), ibid., p. 24.)

26. Staff regulation 1.3 (*a*) provides that:

"Staff members are accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions, and their performance will be appraised periodically to ensure that the required standards of performance are met."

It should be noted that this provision, inter alia, "now explicitly places on managers the duty to make proper appraisals of performances" and that "an integral part of the performance of managers is to properly manage the human, financial, and other resources entrusted to them". (See the commentary to regulation 1.3 (*a*), ibid., p. 32.)

27. Finally, staff rule 101.3 (*a*) provides that:

"Staff members shall be evaluated for their efficiency, competence and integrity through performance appraisal mechanisms that shall assess the staff member's compliance with the standards set out in the Staff Regulations and Rules for purposes of accountability."

This rule "makes explicit that the efficiency, competence and integrity required of staff by the Charter and staff regulation 1.3 (*a*) will be evaluated and that they will be held accountable to maintain the required standards". (See the commentary to the rule, ibid., p. 33.) In addition, the commentary also provides that "it should be emphasized that supervisors will be assessed not only on their technical competence but also on the way in which they utilize the staff placed under their direction." (See ibid., p. 34.)

28. You may also wish to mention in the new report that the 1954 Report on the Standards of Conduct in the International Civil Service, which provides discussions of standards expected of international civil servants, will be updated and revised by the International Civil Service Commission and that the first working group to review the matter will be meeting in Geneva in late October 1999.

Developments since the issuance of A/AC.243/1994/L.3

29. The Advisory Committee commented in its report (A/53/954) that the Secretary-General's report has not addressed "what developments have taken place since 1994", when A/AC.243/1994/L.3 was issued. In that connection, in addition to the comments set out above, we note the following.

30. With respect to paragraph 48 of A/AC. 243/1994/L.3 on the Administrative Tribunal, it should be noted that the Committee on Applications for Review of Administrative Tribunal Judgements was abolished by the General Assembly in its resolution 50/54 of 11 December 1995. Therefore, no recourse may now be had to the International Court of Justice requesting a review of the judgements rendered by the Tribunal.

31. In addition, the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218 A in its report (A/49/418) made a number of recommendations to improve and strengthen the financial administration of the Organization and the accountability and responsibility of staff (ibid., sect. IV). You may wish to ascertain the action of the General Assembly in that regard.

Conclusion

32. As we understand it, the existing procedures set out in the Staff Rules and the relevant administrative instructions provide sufficient procedures to determine instances of gross negligence. However, it would appear that the mechanisms to recover from individuals who have committed gross negligence would have to be strengthened and further developed, to comply with the request of the General Assembly. This is a complex and time-consuming task which would, at a minimum, require the establishment of a working group within the Organization, with representatives of the relevant offices, in order to carefully evaluate the policy implications of the implementation of such mechanisms and set guidelines and formulate proposals, before any action could be taken.

14 October 1999

PRIVILEGES AND IMMUNITIES

7. PRIVILEGES AND IMMUNITIES OF UNICEF AND ITS OFFICIALS

Memorandum to Senior Adviser, Office of the Executive Director, United Nations Children's Fund

1. This is with reference to your memorandum of 22 July 1999, concerning enquiries from the [Member State] police authorities arising from a complaint of criminal force and assault lodged by a former staff member (Ms. A.) against a UNICEF staff member (Mr. X.) and two security guards (Messrs Y. and Z.). Our comments are as follows.

2. We note that by its letter of 20 July 1999, UNICEF has asserted its own immunity from legal process. In response thereto, the [Member State] police have, in their letter of the same date, confirmed that the case is not against UNICEF but against members of the staff of UNICEF. The UNICEF office in [Member State] should therefore be advised to bring the following privileges and immunities to the attention of the police authorities through the Ministry of Foreign Affairs of [the Member State].

3. Pursuant to article IX of the Standard Basic Cooperation Agreement between UNICEF and the Government (hereinafter "the Basic Cooperation Agreement") signed on 2 December 1997, the Convention on the Privileges and Immunities of the United Nations (hereinafter "the Convention") shall be applicable mutatis mutandis to UNICEF and its officials and experts on missions in the country. Article XIII, paragraph 1(*a*), of the Basic Cooperation Agreement, provides that UNICEF officials shall "be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". Article XIV, paragraph 1, of the Agreement, further provides that "experts on mission shall be granted the privileges and immunities specified in article VI, sections 22 and 23, of the Convention".

4. Article V, section 18 (*a*), of the Convention on the Privileges and Immunities of the United Nations, to which [the Member State] has been a party since 1961, provides that the officials of the United Nations shall "be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". Pursuant to article VI, section 22 (*a*), experts on mission shall be accorded immunity from personal arrest or detention. Section 22 (*b*) further provides that they shall also be accorded, "in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind".

5. As UNICEF staff member, Mr. X. is immune from legal process in respect of words spoken or written and all acts performed by him in his official capacity. If Mr. X. is a national of [the Member State], it should be noted 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, Mr. X enjoys such immunity regardless of his nationality.

6. United Nations security guards are deemed to be experts on mission within the meaning of article VI of the Convention. Accordingly, Messrs Y and Z are immune from personal arrest or detention. They also enjoy immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission.

7. Under Section 34 of the Convention, [the Member State] has an obligation to be "in a position under its own law to give effect to the terms of this Convention". It would thus be for the Ministry of Foreign Affairs to request the police authorities to resolve the present matter in a manner consistent with the privileges and immunities of UNICEF and its officials and experts on missions and in accordance with the Government's obligations under the Basic Cooperation Agreement and the Convention.

8. As a former staff member, Ms. A should be advised to pursue any complaints she might have against UNICEF or its officials and experts on mission in accordance with her contract and the UNICEF internal rules and regulations. We note that UNICEF had extended Ms. A's contract from 30 August to 30 September 1998, without any services being rendered, in response to her lawyer's submission that she had not been given one month's notice. Upon her acceptance of the latter arrangement, she gave up any claims she might have with respect to her employment with UNICEF.

29 July 1999

PROCEDURAL AND INSTITUTIONAL ISSUES

8. AUTHORITY FOR THE ESTABLISHMENT OF UNITED NATIONS AWARDS—AWARDS IN THE FIELD OF DRUG USE PREVENTION AND CONTROL—NANSEN AWARD

Memorandum to the Senior Legal Liaison Officer, United Nations Office at Vienna

1. This is with reference to your memorandum of 4 February 1999 on the above-captioned subject. Having referred to my original advice on that subject,[13]

you inquired whether, "in view of the extensive authority" granted to the Executive Director of the United Nations International Drug Control Programme (UNDCP), who is also Director-General of UNOV, by the financial rules of the Fund of UNDCP and in view of General Assembly resolution 45/179 of 21 December 1990, entitled "Enhancement of the United Nations structure for drug abuse control", "an exception cannot be made to the requirement of authorization by the General Assembly for the establishment of awards." In this respect you referred to the Nansen Award established by the United Nations High Commissioner for Refugees and inquired whether the mandate of the Executive Director of UNDCP in the area of drugs might be considered as "sufficient basis for an award in the area of drugs".

2. I note that your original request for advice, dated 1 February 1999, referred to the intention of the Director-General of the United Nations Office at Vienna "to establish civil awards to be granted annually to individuals who have made outstanding contributions to the fight against drug abuse **or in the area of crime prevention**" (emphasis added). Your current request for advice refers only to "an award in the area of drugs" and does not mention crime prevention. Accordingly, the advice below will concern the "fight against drugs" award.

General Assembly resolution 45/179 and financial rules of the UNDCP Fund

3. We have reviewed both General Assembly resolution 45/179, entitled "Enhancement of the United Nations structure for drug abuse control", and the financial rules of the Fund of UNDCP to which you referred. While I share your view that those two documents grant extensive responsibilities to the Executive Director of UNDCP, they do not in our view indicate that, in approving them, the relevant legislative bodies intended to delegate to the Executive Director the authority to establish United Nations awards in the field of drug use prevention and control.

Nansen Award

4. In connection with your reference to the Nansen Award, I note that it was established in 1954, in the early years of the Organization, in the absence of any policy or practice established by the General Assembly. As we understand, it has been the consistent policy and practice of the Organization since the late 1950s, following the episode with the "Nansen Medal", that while the United Nations has the authority to establish awards, such an authority is that of the Organization, as opposed to that of the Secretariat. This authority has been understood to be vested in the General Assembly and the Security Council as the legislative bodies of the Organization, and not in the Secretary-General.[14]

5. Examples of that practice whereby United Nations awards were established by the United Nations legislative bodies are as follows: prizes for scientific research works in the causes and control of cancerous diseases (General Assembly resolution 1398 (XIV) of 20 November 1959); the prize to individuals in the field of human rights (General Assembly resolution 2217 (XXI) of 19 December 1966); the United Nations Population Fund (UNFPA) award for contributions to the awareness of population questions or to their solutions (General Assembly resolution 36/201 of 17 December 1981); and the "Sasakawa/Department of Humanitarian Affairs Disaster Prevention Award" (General Assembly resolution 51/194 of 17 December 1996).[15] Most recently, a "Dag Hammarskjöld Medal" was established by the Security Council in its resolution 1121 (1997) of 22 July 1997.

General considerations

6. The creation of United Nations civil awards, like the one under review, is ultimately a policy decision to be taken by the Secretary-General. However, in view of the risks involved, in almost all cases in the past it was decided that the interests of the Organization would be better served and safeguarded if the establishment of an award was directly effected by a United Nations legislative body. Apart from other issues involved (e.g., financial aspects), perhaps the most serious concern is that the criteria and mechanisms for selecting awardees should be determined and approved by the relevant United Nations legislative body, not the Secretariat, so that if subsequently a particular selection were not supported by such body, the Secretary-General would not become vulnerable to criticism.

Possible course of action

7. The preceding considerations, however, should not mean that it is necessarily the General Assembly itself that must initiate action concerning the establishment of an award for individual achievements in the area of drug control. One way of initiating the process of establishing such an award would be to consider the proposal at the session of the Commission on Narcotic Drugs, a central intergovernmental body responsible for dealing with all drug-related matters within the United Nations system.

8. Should the Commission support the initiative, it, being a functional commission of the Economic and Social Council, would then make an appropriate recommendation[16] to the Council. If the Council agrees with the idea, it would report it to the General Assembly which, for example, by taking note of the relevant report of the Council, would formally approve the establishment of the award.

16 February 1999

9. LEGAL STATUS OF THE PERMANENT OBSERVER MISSION OF THE ORGANIZATION OF THE ISLAMIC CONFERENCE—PRIVILEGES AND IMMUNITIES OF NON-STATE ENTITIES INVITED TO PARTICIPATE AS OBSERVERS IN UNITED NATIONS MEETINGS

Letter to the Permanent Representative of a Member State

I wish to refer to your letter of 8 March 1999 addressed to the Secretary-General seeking his good offices in order to regularize the status of the Permanent Observer Mission of the Organization of the Islamic Conference (OIC) "both at the United Nations and also vis-à-vis the host country". In particular, you seek that "the necessary facilities and privileges conducive to the unhindered discharge of its functions be extended to [the OIC Permanent Observer Mission]". Your letter has been referred to this Office for response.

The international legal status of the OIC Permanent Observer Mission derives from General Assembly resolution 3369 (XXX) of 10 October 1975, entitled "Observer status for the Islamic Conference at the United Nations". In accordance with the resolution, the Assembly decided "to invite the Islamic Conference to participate in the sessions and the work of the General Assembly and of its subsidiary organs in the capacity of observer", and requested "the Secretary-General to take the necessary action to implement the present resolution". The resolution did not address the scope of privileges, immunities and facilities to be accorded to the Mission.

In the absence of any specific international legal regulation of the privileges and immunities of non-State entities invited to participate as observers in United Nations meetings at Headquarters, United Nations practice has been to consider such issues principally in the light of the pertinent provisions of the Charter of the United Nations and the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations ("the Headquarters Agreement"). It has been the consistent view of the Organization that a permanent observer delegation, as an invitee to meetings of United Nations organs, is entitled to enjoy in that capacity certain functional immunities necessary for the performance of official functions vis-à-vis those organs. These immunities flow by necessary intendment from Article 105 of the Charter of the United Nations. The United Nations has consistently maintained that a permanent observer delegation would enjoy functional immunity from legal process in respect of words spoken or written and all acts performed by members of the observer delegation in their official capacity before relevant United Nations organs. In addition to that functional immunity, a permanent observer delegation would also enjoy inviolability for official papers and documents relating to their relations with the United Nations. If such inviolability is to have any meaning, it necessarily extends to the premises of the Mission.

In addition, observer delegations benefit from the following provisions of the Headquarters Agreement. Namely, section 11 of the Headquarters Agreement provides that "the federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of ... persons invited to the headquarters district by the United Nations", and that "the appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district." Furthermore, according to section 12, the facilities referred to in section 11 "shall be applicable irrespective of the relations between the Governments of the persons referred to in that section and the Government of the United States". Section 13 further provides that the host State shall grant visas "without charge and as promptly as possible" to the persons in question and also exempts such persons from being required "to leave the United States on account of any activities performed by [them] in [their] official capacity".

Neither the Headquarters Agreement nor any legislation in the host State confers diplomatic privileges and immunities to observer delegations. At the same time, observers who form a part of the diplomatic staff of Member States' missions accredited to the United Nations may enjoy diplomatic immunities in the host State provided for them in the latter capacity. Of course, diplomatic status may be extended to the observer delegation by virtue of a special arrangement with the host State. However, this is a matter for negotiation between the host State and the intergovernmental organization concerned.

15 March 1999

10. CONSIDERATION OF AGENDA ITEMS IN NUMERICAL ORDER

Facsimile to the Deputy High Commissioner for Human Rights, Geneva

1. This is with reference to your facsimile of 17 March addressed to the Legal Counsel seeking, on behalf of the Chairperson of the Commission on Human Rights, our advice on the two following questions concerning the draft provisional agenda for the fifty-fifth session of the Commission.

"First, having regard to the fact that the Commission adopted, in its resolution 1998/84, its agenda based on the presentation by its Chairperson on 24 April 1998 that items would be considered in numerical order, how should the Chairperson deal with a proposal to cluster items that would result in the numerical sequence not being followed?"

Our comments are set out below.

2. At the outset, it should be noted that, in its resolution 1998/84, the Commission adopted a draft provisional agenda for the fifty-fifth session. Therefore, neither the content nor the format of the agenda will be final until such time as the agenda is adopted by the Commission itself at the fifty-fifth session. This fact was acknowledged by the President of the Commission at the fifty-fourth session when he stated that "both of these matters", referring to the numerical sequencing and the shortening of the agenda, "are, of course, properly the business of the Bureau of the fifty-fifth session".

3. Based on the foregoing, while due consideration should be given to the draft provisional agenda adopted by the Commission at the fifty-fourth session and the understanding reached thereon, it is entirely within the discretion of the fifty-fifth session to adopt its own agenda. Thus, if a proposal to cluster items were to be made by any member of the Commission, the Chairperson should put such proposal to a vote.

4. In accordance with rule 56 of the rules of procedure of the functional commissions of the Economic and Social Council, each member of the Commission shall have one vote. Rule 57 provides that "a proposal or motion before the commission for decision shall be voted upon if any member so requests". Rule 58 further provides that "decisions of the commission shall be made by a majority of the members present and voting." Thus, if a majority of those present and voting vote in favour of the proposal, it would be adopted.

"Secondly, should the Bureau present a programme of work for consideration by the Commission, giving effect to the principle of numerical sequence in the consideration of items, and should this be contested by a delegation, how should the Chairperson steer the issue, having regard to the rules of procedure?"

5. We note that it has been the practice of the Commission for the Bureau to present a timetable for the consideration of agenda items and that such timetable is usually approved or used de facto as the basis for the Commission's programme of work during the session. As such, the Bureau should present for the approval of the Commission a timetable/programme of work in accordance with the established practice of the Commission. As the draft provisional agenda for the fifty-fifth session is based on the principle of numerical sequence, the Bureau should prepare such timetable/programme of work reflecting the numerical sequence of agenda items.

6. Ultimately, it is for the Commission to decide whether to approve the timetable/programme of work proposed by the Bureau. Thus, if a member or members of the Commission were to raise an objection to the proposed timetable/programme of work, the Chairperson could put the proposed timetable/programme of work to a vote in the manner described in paragraph 4 above.

18 March 1999

11. CONFIDENTIALITY—RULES OF PROCEDURE OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

Letter to the Chairman of the Commission on the Limits of the Continental Shelf, United Nations Convention on the Law of the Sea

I am writing in response to your letter of 15 March 1999. In the letter you informed me that, as pursuant to annex II ("Confidentiality") to the rules of procedure of the Commission on the Limits of the Continental Shelf (hereinafter "the Commission"), a coastal State may classify any data and other materials included in its submission to the Commission as confidential. At its fourth session, held in New York from 31 August to 4 September 1998, the Commission decided to seek my legal opinion as to which procedure would be the most appropriate in cases where it might be necessary to institute proceedings following an alleged breach of confidentiality. In this connection you refer, in particular, to rules 4 and 5 of annex II to the rules of procedure of the Commission (CLCS/3/Rev.2).

Rule 4, which relates to duty to preserve confidentiality, stipulates that:

"1. The members of the Commission shall not disclose, even after they cease to be members, any confidential information coming to their knowledge by reason of their duties in relation to the Commission.

"2. The duty of the members of the Commission not to disclose confidential information constitutes an obligation in respect of the individual's membership in the Commission."

Rule 5, concerning enforcement of rules of confidentiality, provides:

"1. The Secretary-General shall provide the Commission with all necessary assistance in enforcing the rules concerning confidentiality.

"2. The Commission may institute appropriate proceedings and shall make known its findings and recommendations."

General observations

The United Nations does not have any standard procedure that could be recommended to the Commission for its consideration as a model to be applied in cases of an alleged breach of confidentiality. However, in instituting, pursuant to paragraph 2 of rule 5 of the annex, appropriate proceedings for dealing with this type of situation, the Commission may take into account the following considerations.

In accordance with rule 3 of the annex, access to confidential material submitted by the coastal State or States shall be confined to the members of the Commission or its relevant subcommissions that have been requested to examine the submission, and to staff members of the United Nations Secretariat designated to assist the concerned members of the Commission or its subcommissions.

Staff of the United Nations Secretariat

Pursuant to Article 97 of the Charter of the United Nations, the Secretary-General of the United Nations is the chief administrative officer of the Organization. Article 101 of the Charter provides that the Secretary-General appoint the staff of the Organization under regulations established by the General Assembly. Thus, the staff of the United Nations performs their duties under the administrative authority of the Secretary-General.

(a) Requirement to observe confidentiality

Staff members of the United Nations Secretariat who are assigned to assist the Commission and have access to confidential material are bound to preserve the confidentiality of that information in accordance with the applicable staff regulations and rules, and administrative instructions issued in their furtherance.

In his Bulletin dated 9 August 1994 the Secretary-General drew the attention of all staff to their obligations in regard to security of information under the Staff Regulations, and to their personal responsibility for the proper protection of information which they may be called upon to handle in the course of their duties (ST/SGB/272). The Secretary-General referred, in this regard, to staff regulation 1.5 providing that staff members are required to "exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any information known to them by reason of their official position that has not been made public, except in the course of their duties or by authorization of the Secretary-General. Nor shall they at any time use such information to private advantage. These obligations do not cease upon separation from the Secretariat."

Staff regulation 1.2 (1) of the revised text of article I of the Staff Regulations, adopted by the General Assembly in its resolution 52/252 of 8 September 1998, which is based on the ideas of staff regulation 1.5, further stipulates that "staff members shall exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. These obligations do not cease upon separation from service."

(b) Disciplinary proceedings and measures

A breach of confidentiality constitutes non-compliance with the aforementioned obligations and may be qualified as misconduct on the part of that staff member. In accordance with the Staff Regulations and Rules, staff are held accountable through disciplinary measures for failure to comply with their obligations and the standards of conduct.

Staff regulation 10.2 stipulates that the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory and that he may dismiss a member of the staff for serious misconduct.

Rule 101.2 of the revised text of chapter I of the 100 series of the Staff Rules, noted[17] by the General Assembly in its resolution 52/252 of 8 September 1998, states in this regard:

> "Disciplinary procedures set out in article X of the Staff Regulations and chapter X of the Staff Rules may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances."

Staff rule 110.1 further provides that failure by a staff member to comply with his or her obligations under the Charter and the aforementioned regulatory instruments may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary proceedings and the imposition of the disciplinary measures referred to in staff rule 110.3.

In order to provide guidance and instruction on the application of chapter X of the Staff Rules and outline the basic requirements of due process to be afforded a staff member against whom misconduct is alleged, the Secretary-General on 2 August 1991 issued an administrative instruction (ST/AI/371) which addresses such issues as initial investigation and fact-finding, due process rights, and referral to and procedures of a Joint Disciplinary Committee etc.

(c) *Privileges and immunities and their waiver*

It should also be noted that, although pursuant to section 18 (*a*) of the Convention on the Privileges and Immunities of the United Nations, staff members as officials of the Organization are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity, according to section 20 of that Convention, privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. Therefore, under the Convention, the Secretary-General has the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of the United Nations.

(d) *Conclusions*

It follows from the above that, as pursuant to the Charter of the United Nations, the staff of the United Nations are under the administrative authority of the Secretary-General, in cases of an alleged breach of confidentiality by a staff member assisting the Commission, the matter will be dealt with in accordance with the aforementioned United Nations procedures applicable to the staff of the Organization.

Members of the Commission

The members of the Commission are elected for five years in accordance with article 76 and annex II to the United Nations Convention on the Law of the Sea by a Meeting of States Parties convened pursuant to article 319, paragraph 2 (*e*), of that Convention. They serve on the Commission in their personal capacity and are eligible for re-election (annex II, article 2, para. 4). The rules of procedure of the Commission require that each member of the Commission shall solemnly declare, before assuming his or her duties, that he or she will perform these duties honourably, faithfully, impartially and conscientiously.

The Law of the Sea Convention is silent on the question of what actions should be taken if a member of the Commission is accused of being involved in activities inconsistent with his or her duties as a member of the Commission. An alleged breach of confidentiality will constitute such an activity because the members of the Commission are under the obligation not to disclose any confidential information obtained in the course of their duties as members of the Commission (rule 4 of annex II to the rules of procedure of the Commission). The Convention also does not provide any guidance on the question of who will have the authority to undertake an investigation of the accusations against a member of the Commission and to make a determination, on the basis of such an investigation, as to whether those accusations are valid.

You will recall that, on the question of the applicability of the Convention on the Privileges and Immunities of the United Nations to the members of the Commission, this Office was of the view that, "by established precedent in respect of similar treaty organs, the members of the Commission on the Limits of the Continental

Shelf can be considered to be experts on mission covered by article VI of the General Convention."[18]

(a) Experts on mission—requirement to observe confidentiality

There are currently no special regulations or rules applicable to experts on mission. In paragraph 9 of its resolution 52/252, the General Assembly requested the Secretary-General to expedite the submission to the Assembly, by its fifty-fourth session, of appropriate regulations and rules governing, inter-alia, the status, basic rights and duties of experts on mission. The legislative basis for the adoption of the proposed regulations will be Article 105, paragraph 3, of the Charter of the United Nations, which empowers the Assembly to make recommendations with a view to determining the privileges and immunities of "officials" of the Organization and to propose conventions to Member States for that purpose. The Assembly did so by adopting in 1946 the Convention on the Privileges and Immunities of the United Nations, which in its article VI defines the privileges and immunities of experts on mission. The proposed regulations, a draft of which is being currently finalized by the Secretariat, are modelled on the revised text of article I of the Staff Regulations referred to above.

Draft regulation 2 (*f*) relating to the disclosure of information provides the following:

> "Officials and experts on mission shall exercise the utmost discretion in regard to all matters of official business. Officials and experts on mission shall not communicate to any Government, entity, person, or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. If they are not appointed by the Secretary-General, such authorization shall be by the body that appointed them. These obligations do not cease upon the cessation of their official functions."

In the commentary to the draft regulations prepared by the Secretariat to assist the General Assembly in deliberating on this matter, with reference to regulation 2 (*f*), it is observed that it may be difficult to enforce the last sentence, but at the very last, if a former expert on mission ignores the obligation in the draft regulation, a notation could be made in his or her official file to prevent re-engagement of that person.

(b) Disciplinary proceedings and measures

The United Nations does not have established procedures for dealing with cases of non-observance of their obligations by experts on mission appointed by intergovernmental bodies. The newly proposed draft regulations, referred to above, do not contain any provisions regarding such procedures either.

(c) Privileges and immunities and their waiver

As the members of the Commission are considered, in accordance with the legal opinion noted above, as experts on mission, they enjoy the privileges and immunities accorded to such experts pursuant to article VI of the Convention on the Privileges and Immunities of the United Nations, including immunity from legal process of any kind. Section 23 of that article states that the privileges and immunities are granted to experts on mission in the interests of the United Nations and not for the personal benefit of the individuals themselves and that the Secretary-General

shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it could be waived without prejudice to the interests of the United Nations.

Draft regulation 1 (*e*) of the proposed regulations in this regard stipulates that in any case where an issue arises regarding the application of the privileges and immunities enjoyed by experts on mission, an expert on mission shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived, in accordance with the relevant instruments.

Recommendations

As there are no model procedures that could be recommended to the Commission, the latter may wish to consider elaborating its own procedures which correspond to the special nature of the Commission as a body whose members are experts acting in their personal capacity.

It appears that the special nature of the Commission may require that any allegations of a breach of confidentiality by a member of the Commission needs to be investigated by the Commission itself. Such an investigation may be conducted either by the Commission as a whole or by a panel consisting of three or five members appointed by the Commission for that purpose (the investigating body). It is of paramount importance that under the procedures approved by the Commission, a member of the Commission who is accused of a breach of confidentiality be afforded due process. Therefore, the concerned member of the Commission should have the right to have access to all the documentation related to the allegations of a breach of confidentiality and to submit written or oral observations to the investigating body within a specified time. Investigation of allegations should be conducted in strict confidentiality to avoid tarnishing the reputation of the member concerned during that process. Having completed the examination of the case, the investigating body should prepare a report on its findings. The report should contain the following:

(*a*) Allegations of a breach of confidentiality;

(*b*) Statement of the concerned member of the Commission;

(*c*) Synopsis of the evidence and the evaluation of it by the investigating body;

(*d*) Findings, indicating which of the allegations, if any, appear to be supported by the evidence;

(*e*) Conclusions of the investigating body;

(*f*) Dissenting or separate opinion, if any.

Since the Commission is a body which is elected by the Meeting of States Parties, a report of the investigating body should be forwarded to the Meeting.

30 April 1999

12. APPOINTMENT OF THE SECRETARY-GENERAL OF THE WORLD METEOROLOGICAL ORGANIZATION—VOTING PROCEDURES

Letter to the Secretary-General of the World Meteorological Organization

1. This refers to your memoranda of 10 and 11 May 1999 to the Legal Counsel of the United Nations, in which you sought our advice on the voting procedures

of the Secretary-General of WMO. In your memorandum of 10 May, you requested our advice on the voting procedure in the event of indecisive votes under regulation 196 (*f*) and (*g*) of the General Regulations. In your memorandum of 11 May, you requested our advice on whether successive votes might be interrupted or whether the voting must continue until a new Secretary-General is appointed.

(a) *Voting procedure in the event of successive indecisive votes*

2. Regulation 196 (*f*) provides that in the event that the two final candidates receive the same number of votes "a further vote" shall take place. Similarly, paragraph (*g*) of the same regulation provides that if a proposal that a preferred candidate be declared appointed is not supported by a two-thirds majority, "a further vote" shall take place. If the further votes referred to in these paragraphs remain indecisive, Congress, under paragraph (*h*) of the regulation, shall decide on whether "further voting shall take place, whether a new procedure shall be followed or whether its decision shall be withheld".

3. Our advice was sought on:

(i) Whether Congress can decide on repeated voting until a two-thirds majority is obtained;

(ii) Whether a decision of Congress to follow a "new procedure" includes a presentation of a new candidate; and

(iii) Whether in deciding to withhold its decision, Congress can adjourn the decision to another meeting, or to the next Congress, and if so, who will be the Secretary-General to the organization in the meantime.

(i) *Further voting—an additional voting or repeated voting*

4. Although the United Nations has examples of procedural rules which require continual voting until a result is reached (for example, rule 142 of the rules of procedure of the General Assembly, which deals with the election of non-permanent members of the Security Council), regulation 196 itself envisages breaks in the voting process (see paragraph (*h*)), and thus does not require repeated or continued voting until such time as a two-thirds majority is obtained, or one of the two final candidates receives a higher number of votes. Since the purpose of rules of procedure is to enable a body to discharge its mandate, particularly in the event of a deadlock, it would appear that the ordinary meaning of the words "further voting shall take place" in regulation 196 (*h*), seen in the context of the regulation as a whole, and particularly paragraphs (*f*) and (*g*), indicates that only one more vote for the deadlocked candidates should take place. However, as the master of its own procedures, Congress may interpret the procedural rule in other ways if it so decides, for example, by having further votes if there was some movement indicating that the deadlock might be resolved. If the additional vote is indecisive, paragraph (*h*) gives Congress a number of options to break the deadlock.

(ii) *A "new procedure"—and whether it includes a new candidate*

5. A decision to follow a "new procedure" in case of an indecisive vote does not necessarily compel Congress to open the process to include the presentation of a "new candidate". The "new procedure" envisaged in regulation 196 (*h*) could aim at breaking the deadlock between the two candidates who obtained the same number of votes. The question of what constitutes a "new procedure" is a matter for Congress to decide.

(iii) *The meaning of a decision to withhold a decision*

6. In deciding to withhold its decision, Congress may postpone the decision to the next meeting, or to the next Congress. In either case it will have to specify the time limit of the postponement and indicate that, in the meantime, the incumbent would continue his functions until a new Secretary-General is appointed. The extension of the term of office of the incumbent Secretary-General would seem to be the only available option, as Congress does not have the legislative authority to appoint another candidate as an Acting Secretary-General pending the appointment of a new one.

(b) Breaking the successive votes or conducting uninterrupted voting

7. In seeking our advice on whether successive votes should be conducted until the appointment of a new Secretary-General, you refer in your memorandum of 11 May 1999 to regulation 107 which provides that, after the Presiding Officer has announced the commencement of voting, no one may interrupt the voting, except on a point of order concerning the manner of conducting the vote.

8. Regulation 107 is a common procedural provision based on rule 88 of the rules of procedure of the United Nations General Assembly. This type of provision is designed to protect the actual voting process, i.e., its successive ballots, from the time that the Presiding Officer announces the start of the ballot to the time that he/she announces its result. This type of protective provision does not in and of itself prevent Congress from dealing with another matter between ballots, if Congress so wishes. Whether the process of electing the Secretary-General may be interrupted depends on the terms of regulation 196. Paragraph (*h*) of that regulation envisages that there may be breaks in the voting process because, in the event of a deadlock, the Congress has to decide on various alternatives. It would seem to us that if Congress were to reach that point it could properly decide that it needed an interruption in the process so that its members could consult prior to choosing between the alternatives set out in regulation 196.

12 May 1999

13. POSSIBILITY OF STATES NOT MEMBERS OF THE COMMISSION ON SUSTAINABLE DEVELOPMENT HOLDING OFFICE IN AN OPEN-ENDED INTERGOVERNMENTAL GROUP OF EXPERTS—RULE 15 OF THE RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL

Letter to the Chairman of the Commission on Sustainable Development

At its seventh session, on 30 April 1999, the Commission on Sustainable Development recommended to the Economic and Social Council for consideration at its substantive session of 1999 a draft resolution entitled "Preparations for the ninth session of the Commission on Sustainable Development on the issue of energy". In that context, the Commission invited the Economic and Social Council to consider "on an exceptional basis and without creating a precedent and without prejudice to other bodies the possibility of States that are not members of the Commission on Sustainable Development holding office in the Ad Hoc Open-ended Intergovernmental Group of Experts on Energy and Sustainable Development". The Commission also requested the Office of Legal Affairs "to submit its legal opinion on that matter to the Chairman of the Commission [on Sustainable Development] for

transmission to the President of the [Economic and Social] Council".[19] Inasmuch as the Commission on Sustainable Development has requested the opinion of this Office, the Office of Legal Affairs can only address issues of a legal nature, including questions of procedure. Our comments on the legal aspects of the question are as follows.

Rule 15 of the rules of procedure of the functional commissions of the Economic and Social Council, which rules apply to the Commission, provides that at the commencement of a regular session "the commission shall elect, from among the representatives of its members, a Chairman, one or more Vice-Chairmen and such other officers as may be required." Thus, the basic rule is that the Bureau is elected from the membership of the body conducting the elections.

The first legal issue is the extent of the membership of the "Ad Hoc Open-ended Intergovernmental Group of Experts on Energy and Sustainable Development". In particular, does "open-ended" refer to a group limited to (*a*) the membership of the Commission on Sustainable Development; (*b*) all States Members of the United Nations; or (*c*) all Member States. The General Assembly did not in terms specify its intent when it decided that the Group of Experts should be "open-ended". Unfortunately, the established practice of the United Nations encompasses all three options and the terminology to distinguish between those options is not uniform and thus it is not possible to choose between those options by legal analysis. Obviously, the Assembly could interpret its resolution, but this is impractical since the Economic and Social Council must act at its forthcoming session.

The next legal issue is whether the Council could interpret the resolution. We think that in the circumstances where the General Assembly entrusted the implementation of these Agenda 21 tasks to the Commission on Sustainable Development, it is reasonable to assume that, if the terms of the procedural rules which are applicable to the Commission by virtue of its status as a subsidiary organ of the Economic and Social Council cause a difficulty, the Council could interpret the intent of the General Assembly in order to effectively implement the resolution.

If the Council were to decide that the Group is open-ended to all Members of the United Nations, or to all States, the Bureau can be selected from States not members of the Commission on Sustainable Development. If the Council decides that the intention was that it was open-ended to members of the Commission, the Council would have to decide, by a specific decision or resolution, to make an exception to rule 15 to enable non-members of the Commission to nominate their nationals to the Bureau. That exception could, of course, be "on an exceptional basis and without creating a precedent".

3 June 1999

PROCUREMENT

14. PARTICIPATION OF ORGANIZATIONS OF THE UNITED NATIONS SYSTEM IN COMPETITIVE BIDDING EXERCISES CONDUCTED BY GOVERNMENTS

Note prepared by the General Legal Division of the Office of Legal Affairs

Background

1. We understand that the question of United Nations system organizations participating as bidders in procurement exercises conducted by Governments was raised on various occasions in the past 15 years, in connection with the assistance

provided by such organizations to Governments for the execution of projects funded from World Bank loans or IDA credits. The question was discussed, in particular, in consultations in 1994-1995 between the Bank and United Nations system organizations regarding the conditions and modalities for the organizations' participation in the execution of such projects.

2. At that time, private firms, which were in competition with United Nations system organizations to provide similar services, apparently complained to the Bank that it was according special status to the United Nations organizations. As a result, as we understand, the Bank proposed, inter alia, that the United Nations system organizations compete among themselves and with private firms for the provision of assistance or services to Bank borrowers. The Office of Legal Affairs cautioned against the United Nations and its funds and programmes participating in such competitive bidding.

3. In June 1996, following negotiations on the matter between several United Nations organizations and the Bank, a Standard Agreement between Bank Borrower and United Nations Agencies was eventually issued by the Bank, for use when a United Nations system organization is selected on a "sole source" basis (as opposed to a competitive basis) to provide services to Bank borrowers. Although United Nations representatives were involved in the negotiation of the draft Standard Agreement, they were not given an opportunity to review and agree to the final text before it was issued by the Bank.[20] In his covering letter dated 12 June 1996 transmitting to the Office of Legal Affairs a copy of the Standard Agreement, the Acting Director of the Operations Policy Department of the Bank stated that "the Standard Agreement was issued to the staff under the joint signatures of the two Managing Directors for Operations and the Senior Vice-President and General Counsel", and that the Agreement "will be applied whenever an agency is selected on a sole-source basis to provide services".

4. We understand that, in practice, the Standard Agreement is used mainly by specialized agencies; the United Nations Office for Project Services (UNOPS) uses the Management Services Agreement negotiated with the Bank; and the United Nations Development Programme (UNDP) uses either the Management Services Agreement or a Cost-Sharing document annexed to the relevant project document signed with Bank borrowers. We are informed that the United Nations Children's Fund (UNICEF) is still negotiating with the Bank the text of a standard agreement for use with Bank borrowers.

5. We understand from UNDP and UNOPS that the Bank has recently adopted a more restrictive position and has sought to oblige United Nations system organizations to compete with private companies in order to provide assistance or services to Bank borrowers relating to the execution of their projects financed from Bank loans. This seems to have been confirmed by the General Counsel of the Bank at the last meeting of Legal Advisers, when he stated that "United Nations agencies may be hired if they are competitive" (see para. 12 of the report on the 5-6 March 1998 meeting of Legal Advisers of the United Nations system).[21]

6. Finally, as we understand, three entities of the United Nations system participate in competitive bidding exercises conducted by Bank borrowers: United Nations Industrial Development Organization (UNIDO), International Labour Organization (ILO) and UNOPS. It is not clear to us on what basis UNIDO and ILO participate. It appears that UNOPS has developed an occasional practice of participating in competitive bidding in recent years.

Analysis

7. While the long-standing and consistent practice of the organizations of the United Nations system has been not to engage in competitive bidding, we are not aware of any express prohibition to their doing so. Under the circumstances, the question of whether or not they should be allowed to participate in competitive bidding seems essentially to be a policy matter.

8. In any event, we believe that there are important considerations that should be taken into account in making a decision on the matter. These considerations relate to:

(*a*) The fundamental differences between United Nations organizations and private companies, and between their respective activities;

(*b*) The implications for the interests of the United Nations organizations in allowing them to compete with private companies.

For the reasons set out below, while the question is essentially one of policy, it is unclear why the "unfair competition" argument should be determinative in any decision regarding the modalities for United Nations system organizations, in accordance with their respective mandates, to provide services to Governments, including bank borrowers.

Difference between United Nations system organizations and private companies

9. Firstly, we believe that competitive bidding assumes that the competition will be between comparable institutions engaging in comparable activities. In this respect, we believe that there are fundamental differences between United Nations system organizations and private companies, and between their respective activities. The Bank's position does not seem to recognize such fundamental differences. Rather, it seems to equate United Nations system organizations to private companies.

10. While private companies offer their services on a commercial basis, for profit, United Nations system organizations are intergovernmental organizations which provide their assistance, within specific mandates set by their governing bodies, on a not-for-profit basis. As regularly stated by the General Assembly, their assistance involves other fundamental characteristics that differentiate such assistance from services obtainable from private companies or other sources, inter alia: (*a*) the assistance is of a universal, voluntary, neutral, multilateral and grant nature, and is provided at the specific request of recipient countries, in accordance with such countries' own policies and priorities for development;[22] (*b*) the assistance is provided based on an agreed division of responsibilities among United Nations system organizations, normally within the framework of the country's programme of cooperation with the United Nations system and under the team leadership and the coordination of the United Nations resident coordinator. Thus, a Government's decision to obtain assistance from a United Nations system organization should not be necessarily weighed using the same criteria that would be used to evaluate the suitability of private firms.

11. It seems clear from the General Assembly resolutions concerning operational activities for development of the United Nations system that participation of United Nations system organizations in competitive bidding was not contemplated. As we understand, except for the relatively recent practices of a few entities of the United Nations system noted in paragraph 4 above, the long-standing and consis-

tent practice between United Nations system organizations and countries receiving their assistance has been that the countries made their own determination, based on their own policies and priorities, as to whether they want to implement a particular project by obtaining the necessary inputs commercially from private companies, or by requesting the assistance of a United Nations system organization.

12. We believe that Bank borrowers should similarly be allowed to continue to make their own determination of whether it is in their best interest to request the assistance of a United Nations system organization or to obtain the required services commercially from a private company. This would be consistent with the General Assembly resolutions referred to above[23] and with the long-established policies and practice of the United Nations system organizations.

13. In any event, it is unclear why the "unfair competition" argument presented by private companies should be a determinative factor in deciding on the modalities according to which United Nations system organizations provide their assistance to Governments in executing or implementing their projects funded from Bank loans, since the United Nations system organizations have been established by their member States, in significant measure, expressly for the purpose of assisting States.

14. In the case of those United Nations system organizations which participate in competitive bidding, we agree that their privileges and immunities and their not-for-profit nature, combined with their accumulated expertise, may give them an advantage over their private competitors that enables them to provide States with the required assistance at a lower economic cost. Since this is consistent with the mandates of those organizations and the interests of the recipient Governments, it is unclear why this should be a basis for excluding those entities from seeking to provide such assistance.

UNDP, UNICEF and UNOPS

15. UNDP and UNICEF have indicated that it is not their policy to participate in competitive bidding, and that it would in their view not be appropriate. In their view, participation in competitive bidding would not be consistent with the established framework for their cooperation with Governments, which reflects the concept of a partnership between them and such Governments for the realization of the Governments' development objectives, based on the respective mandates set by their governing bodies, the agreements concluded with such Governments to establish the basic conditions of their cooperation (i.e., the Basic Cooperation Agreement in the case of UNICEF and the Basic Assistance Agreement in the case of UNDP) and the instruments agreed with such Governments for the coordination and integration of their cooperation (the Master Plan of Operations in the case of UNICEF and the Country Cooperation Framework in the case of UNDP).

16. On the other hand, UNOPS has explained that as a self-financing entity created to provide services in a competitive environment, it is obliged, as a practical matter, to compete with private companies providing similar services. UNOPS, therefore, has engaged in competitive bidding in a few instances where it was requested to submit proposals in response to Requests for Proposals issued by Governments.

17. In this respect, we note that UNOPS was established by the General Assembly in its decision 48/501 of 19 September 1994, as a separate and self-financing entity, to provide services related to project management, implementation of project

components executed by Governments or other organizations, project supervision and loan administration, and management services.[24] One singularity of UNOPS as compared to other organizations of the United Nations system is that it is self-financing, i.e., it is not funded from assessed or voluntary contributions, and derives its funding from the fee that it charges for its services. Another singularity is that a significant part of its activities, pursuant to its governing instruments, consists in the direct provision of project management, project supervision, loan administration and other services to Governments or international organizations, which place it in direct competition with private companies offering the same services. Notably, however, UNOPS, as a part of the United Nations, is accorded certain privileges and immunities.

The risk of challenge to the immunity of United Nations system organizations

18. Over the past few decades, the restrictive theory of State immunity has developed in response to the increasing involvement of States and State-owned entities in commercial activities that were previously conducted by the private sector. Under that theory, immunity would not apply to activities of a State that are commercial in nature. For example, section 1605 (*a*) (2) of the United States Foreign Sovereign Immunities Act of 1976, P.L. 94-583, 90 Stat. 2891 (1976), provides that a foreign State shall be immune from the jurisdiction of the courts of the United States, except for actions based upon a commercial activity of the foreign State. Another example can be found in article 7 of the European Convention on State Immunity of 16 May 1972, which provides as follows:

> "1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has on the territory of the State of the forum an office, agency or other establishment through which it engages, in the same manner as a private person, in an industrial, commercial or financial activity, and the proceedings relate to that activity of the office, agency or establishment.
>
> "2. Paragraph 1 shall not apply if all the parties to the disputes are States, or if the parties have otherwise agreed in writing."[25]

19. Attempts have been made to apply the restrictive theory to international organizations, including the United Nations, based on a similar distinction between non-commercial and commercial activities. In United States courts, such attempts have been based on the Foreign Sovereign Immunities Act and on the provision in the United States International Organizations Immunities Act that "international organizations ... shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign Governments". As far as we are aware, no attempt to apply the restrictive theory to the United Nations has been successful.[26] In this respect, we would note that the United States Government, in briefs submitted to the courts in cases involving the United Nations, has supported the United Nations position that the restrictive theory of State immunity does not apply to the United Nations, inter alia, because the United Nations derives its immunity from international obligations based on treaties to which the United States is a party, i.e., the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, which do not recognize any difference between non-commercial and commercial acts. As we understand, the United States Government has recognized the application of the restrictive immunity theory to other international organizations with which it does not have agreements similar to those it has with the United Nations.

20. If the practice of United Nations system organizations competing with private companies for business were to be pursued, it cannot be a priori excluded that the immunity of such organizations might be challenged in court. Whether this would occur and the possible results are difficult to predict. Even if the United Nations system organizations were to prevail in such legal actions, the institution of such actions conceivably could have other implications. For example, Member States, as a matter of policy, might be called upon to consider prohibiting those organizations from engaging in activities that would be in competition with private companies.

Conclusion

21. While it appears that the traditional policies and practices of United Nations system organizations have been not to engage in competitive bidding for the provision of assistance or services to Governments, we are not aware of any express prohibition to their doing so. While it is difficult to evaluate, it also appears that engaging in competitive bidding by United Nations system organizations may entail a risk of challenges to their immunity or adverse reactions from Member States.

22. If the issue raised by the Bank relates not to an abstract policy but to pragmatic economic concerns, the Bank may wish to consider means other than competitive bidding to evaluate the economic costs of the sole-source approach. Recourse to market surveys, for example, could be employed to verify that the costs of the United Nations system organizations providing the assistance or services are competitive with market prices.

23. In any event, in case it should be deemed necessary or desirable to depart from the long-standing policies and practices of the United Nations system organizations, in view of the importance and sensitivity of the issues involved, those organizations may wish to consider submitting the issue to their competent policy-making bodies.

1 March 1999

TREATY ISSUES

15. CERTAIN ASPECTS OF UNITED NATIONS CURRENT TREATY PRACTICE

Memorandum to the Legal Adviser, United Nations Conference on Trade and Development, Geneva

1. This is in reference to your facsimile of 29 January 1999, inquiring about certain trends in the United Nations current treaty practice. We have the following observations on the matter.

2. *Titles of legal instruments.* The titles of legal instruments executed between the United Nations or by United Nations bodies on behalf of the Organization with intergovernmental organizations do not have any particular significance, provided such instruments are concluded in written form and governed by international law. This approach is reflected in the 1969 Vienna Convention on the Law of Treaties (article 2, para. 1 (*a*)) and in the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (not yet in force). Article 2 of the latter Vienna Convention reads as follows:

"1. For the purposes of the present Convention:

(*a*) "treaty" means an international agreement governed by international law and concluded in written form:

(i) between one or more States and one or more international organizations; or

(ii) between international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation".

3. All legal instruments referred to above require registration in accordance with Article 102 of the Charter of the United Nations.

4. In recent years, there has been a growing tendency for certain offices, departments and subsidiary organs of the United Nations to enter into international agreements *in their own name* constituting legally binding obligations for the Organization. In our view, this practice is inappropriate, since strictly speaking they do not possess juridical personality and legal capacities, including the capacity to contract, separate from that of the Organization. Accordingly, all such agreements should be executed in the name of the United Nations.

5. *Intra-organizational arrangements.* Subdivisions of the Secretariat and subsidiary organs of the Organization are not subjects of public international law. Therefore, arrangements which are executed among and between those bodies are governed by the internal law of the Organization. These instruments are not treaties within the meaning of the above-referenced Vienna Conventions and, consequently, do not require registration. In our view, these types of intra-organizational arrangements should be designated as a "Memorandum of Intent", rather than a "Memorandum of Understanding".

6. *Standard/model agreements.* As you know, a number of standard agreements have been elaborated, for example, for technical assistance and cooperation by UNDP, UNICEF and UNHCR. There is also a model status-of-forces agreement (SOFA) prepared pursuant to paragraph 11 of General Assembly resolution 44/49 of 8 December 1989. The standard conference agreement for United Nations meetings held outside established headquarters is contained in ST/AI/342 of 8 May 1987. In fact, there are two model agreements for this purpose, i.e., in the form of a treaty and an exchange of letters.

7. *Standard liability and financial clauses.* The UNDP Standard Basic Assistance Agreement, the UNICEF Basic Cooperation Agreement (BCA) and the model conference agreement contain provisions to protect the legal and financial interests of the Organization in the field of the activities covered by those instruments.

8. *Liability.* Article X, paragraph 2, of the UNDP Standard Basic Assistance Agreement, provides as follows:

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

arises from the gross negligence or wilful misconduct of the above-mentioned individuals."

9. Somewhat similar provisions are contained in the UNICEF Basic Cooperation Agreement. Article XXI, entitled "Claims against UNICEF", provides as follows:

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

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

10. Hold-harmless provisions appear in article X of the model conference agreement, which provides as follows:

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

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

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

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

11. *Financial arrangements.* Model provisions on financial arrangements are contained in articles III, V, VI and VIII of the UNDP Standard Basic Assistance Agreement; in articles II, VI, VII and VIII of the UNICEF Basic Cooperation Agreement; article IX of the model conference agreement; and article V of the status-of-forces agreement.

12. *Clearance requirements.* As you will recall, according to ST/AI/52 of 25 June 1948, which is still in force, "all draft international instruments (conventions, agreements, treaties etc.) concluded by, or under the auspices of, the United Nations shall be submitted to the Legal Department for study and comment before final action is taken on them". These requirements have been further developed in ST/AI/342. According to paragraph 10: "It is the responsibility of the substantive organizational unit to ensure that all drafts of host country agreements that are to be concluded by or under the auspices of the United Nations are submitted simultaneously to the Office of Legal Affairs, the Department of Conference Services and the Office of Financial Services, for review, before negotiations with [the] host Government are undertaken ... Prior to the presentation of the agreement for signature by representatives of the Government, the final text of the agreement should be submitted simultaneously to the Office of Legal Affairs, the Department of Conference Services and the Office of Financial Services for final clearance."

5 April 1999

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

[No legal opinions of secretariats of intergovernmental organizations to be reported for 1999.]

NOTES

[1] It is explained in paragraph 2 of the 3 April 1998 "Information Note to the Committee on Contracts" enclosed with your memorandum that "budget and work plans for EMEP are prepared by an intergovernmental Steering Body on the basis of budget requirement sheets submitted by the centres, and are approved at the annual meetings of the Executive Body for the Convention".

[2] Subject to the so-called "20 per cent rule".

[3] The remaining articles of the instruments relate to ownership of, and responsibility for loss or damage to, non-expendable property acquired with project funds, reservation of the privileges and immunities of the United Nations, and entry into force of the implementing instrument.

[4] The Organization may have to bear certain financial liability and risks which may need to be considered; for example, costs related to office space, supervision of interns, transportation within the country and any other facilities which peacekeeping operations make normally available to their personnel. In addition, costs related to any emergency situations (e.g. repatriation, medical services) would have to be advanced by the Organization even if, subsequently, they are reimbursed by the University.

[5] In this connection, while noting that the Board of Inquiry on one soldier's death completed its report in October 1997, we point out that under the implementation procedures for the new system adopted by the General Assembly on 17 December 1997, the Board is to establish, and the Force Commander is to certify, that the death or injury was service-incurred (see A/52/369, para. 8).

[6] LEAD = Leadership for Environment and Development.

[7] This provision implies that there exists a "parent" or "sister" organization: LEAD-International. If so, the Office of Legal Affairs has no readily available information about such entity, its purposes, activities or officials.

[8] This advice is based on a new version of the Staff Regulations amended by the General Assembly in its resolution 52/252 of 8 September 1998 and on corresponding Staff Rules promulgated by the Secretary-General.

[9] Document A/AC.243/1994/L.3 dated 4 April 1994 is a study prepared by the Ad Hoc Intergovernmental Working Group of Experts ("the Working Group"), established pursuant to General Assembly resolution 48/218 of 23 December 1993. By that resolution, the Assembly decided to study the possibility of establishing new jurisdictional and procedural mechanisms or extending mandates and improving the functioning of existing jurisdictional and procedural mechanisms.

Document A/49/418 is a report of the Working Group, dated 22 September 1994, and is entitled "Jurisdictional and procedural mechanism for the proper management of resources and funds of the United Nations". The report provides a summary of the work of the Working Group, together with its recommendations.

[10] See memorandum of 17 October 1969 from the Legal Counsel to the Chairman of the Property Survey Board, entitled "Procedure in vehicle accident cases", which is also quoted, in relevant parts, in the legal opinion of 6 October 1975, entitled "Question of the financial responsibility to the Organization of members of the staff for accidental damage caused to United Nations vehicles while driving such vehicles—Policy of the Organization in this respect" (*United Nations Juridical Yearbook 1975*, p. 186); a memorandum of 30 June 1981, entitled "'Gross negligence' on the part of a staff member, resulting in damage to United

Nations property—Criteria to be applied in determining whether gross negligence is involved", and a memorandum of 3 September 1981, entitled "Question whether United Nations officers should be charged for damage to vehicles arising out of ordinary negligence", from this Office to the Assistant Secretary-General, Office of Financial Services, respectively (*United Nations Juridical Yearbook 1981*, pp. 165 and 167); and a memorandum of 30 November 1995 from this Office to the Field and Logistics Division, Department of Peacekeeping Operations, entitled "Financial responsibility of United Nations staff members assigned to field missions for loss or damage to United Nations property".

[11] While those legal opinions concerned liability for damage to United Nations property, the principle set out therein would apply generally to other financial losses caused by staff members to the Organization.

[12] There is a proposal to revise ST/AI/371 in order to, inter alia, clarify certain provisions therein and also to clarify the role of the Office of Internal Oversight Services in the disciplinary proceedings. A working group has been established for that purpose, consisting of representatives from various offices, including this Office and OIOS.

[13] That advice essentially indicated that, under the established policy, United Nations civil awards must be created by the United Nations legislative bodies rather than by the Secretariat.

[14] In the past, this Office has advised that the Secretary-General had the power to issue only military medals without an express General Assembly resolution, in view of the substantial administrative and executive powers given to the Secretary-General in respect of the various United Nations peacekeeping missions.

[15] This award was initially established by the Director of the United Nations Office of the Disaster Relief Coordinator. It was, upon the advice of the Office of Legal Affairs, subsequently reported to the General Assembly (see A/51/172–E/1996/77), which approved the arrangement (resolution 51/194).

[16] We would advise that such a recommendation should contain, inter alia, as precise as possible a description of criteria for selecting awardees and of a mechanism of such selection.

[17] Promulgation of staff rules is the prerogative of the Secretary-General.

[18] Letter dated 11 March 1998 from the Legal Counsel, Under-Secretary-General of the United Nations for Legal Affairs, addressed to the Commission on the Limits of the Continental Shelf: Legal opinion on the application of the Convention on the Privileges and Immunities of the United Nations to the members of the Commission; United Nations document CLCS/5, para. 5.

[19] *Official Records of the Economic and Social Council, 1999, Supplement No. 9* (E/1999/29), chap. I.A, para. 2.

[20] The Office of Legal Affairs does not know whether other United Nations system organizations were given such an opportunity.

[21] The Office of Legal Affairs is not entirely sure, however, whether the General Counsel's statement means that United Nations agencies should participate in competitive bidding, or simply that the costs of the assistance provided by such agencies generally should be competitive with the market. However, the January 1997 version of the "Guidelines for Selection and Employment of Consultants by World Bank Borrowers" issued by the Bank, while not entirely clear, seems to be consistent with the more restrictive approach.

[22] See, e.g., General Assembly resolution 50/120 of 20 December 1995, sixth preambular para.; resolution 52/203 of 18 December 1997, fourth preambular para.; and resolution 53/192 of 15 December 1998, fifth preambular para.

[23] See note 22.

[24] By that decision, the General Assembly, on the recommendation of the Economic and Social Council as contained in its decision 1994/284 of 26 July 1994, "decided that the Office for Project Services should become a separate and identifiable entity in accordance with UNDP Executive Board decision 94/12 of 9 June 1994".

[25] See also article 10 of the final text of the set of 22 draft articles submitted to the General Assembly by the International Law Commission on the jurisdictional immunities of States and their property, which provides that a State cannot invoke immunity from the jurisdiction of a

court of another State, in a proceeding arising out of a commercial transaction with a foreign natural or juridical person, except if the commercial transaction is between States or if the parties to the commercial transaction have agreed otherwise (*Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10* (A/46/10), p. 33).

[26] The Office of Legal Affairs has not attempted to conduct a survey and analysis of the application to the rest of the United Nations system organizations of the restrictive theory of sovereign immunity.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS*

[No decision or advisory opinion from international tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 1999].

* See chapter III.A of this volume for information on the International Court of Justice, the two international ad hoc tribunals and the International Tribunal for the Law of the Sea.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

United States of America

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued January 7, 1999 Decided April 2, 1999

No. 98-7055

International Bank for Reconstruction and Development, Appellee, v. *District of Columbia*, Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (97cv01158)

Donna M. Murasky, Assistant Corporation Counsel, argued the cause for appellant. With her on the briefs were *John M. Ferren*, Corporation Counsel, *Charles L. Reischel*, Deputy Corporation Counsel, and *Lutz Alexander Prager*, Assistant Deputy Corporation Counsel.

Albert G. Lauber, Jr. argued the cause for appellee. With him on the brief was *Lloyd H. Mayer*.

Lester Nurick, F. David Lake, Jr., and *Erik H. Corwin* were on the brief for amici curiae The Inter-American Development Bank, *et al.*

Before: Silberman, Sentelle, and Randolph, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* Randolph.

Randolph, *Circuit Judge*: The property, income, operations and transactions of the International Bank for Reconstruction and Development, commonly known as the World Bank, are immune from federal, state and local taxation. The question in this appeal is whether a private contractor, retained by the Bank to provide food services to individuals on the Bank's premises, has derivative immunity from District of Columbia taxes on the contractor's sales of food and beverages.

I

The World Bank is an international, intergovernmental organization, with headquarters in Washington, D.C. Created by Articles of Agreement drawn up at a conference held in Bretton Woods, New Hampshire, in 1944, the Bank is corporate in form, with all of its capital stock owned by its member Governments. *See Herbert Harvey, Inc. v. NLRB*, 424 F.2d 770,773 n.20 (D.C. Cir. 1969). The United States

accepted the Articles in the Bretton Woods Agreements Act of 1945, 22 U.S.C. §§ 286-286m. The Bank is empowered to provide financial assistance for the development of member countries, to promote private foreign investment, to stimulate the balanced growth of international trade, and "[t]o conduct its operations with due regard to the effect of international investment on business conditions in the territories of members." Articles of Agreement (as amended Feb. 16, 1989), article I. One of the treaty's provisions (article VII, § 9(*a*)), which has "full force and effect" throughout the United States, *see* 22 U.S.C. § 286h, confers tax immunity on the Bank in the following terms:

> "The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty."

Nearly 40 years ago the Bank began providing food services for its employees and guests in its D.C. headquarters. Since 1970, it has engaged an outside contractor for this purpose. Initially, the contractor received a fixed percentage of food-service revenues and the Bank provided a substantial subsidy, which by the mid-1980s amounted to $1.3 million per year. In 1989, the Bank phased out the subsidy, renegotiated the agreement with its contractor, then the Marriott Corporation, and replaced the old management-fee contract with a "modified profit and loss" contract. Under the new arrangement, the contractor continued to receive a percentage of revenues and the Bank continued to provide equipment, space and utilities, but the burden of any financial loss now fell on the contractor.

The District of Columbia imposes a tax on the retail sale of food and beverages. The vendor is responsible for paying the tax to the District, but "reimbursement for the tax imposed upon the vendor shall be collected by the vendor" from the purchasers of the food and drink. D.C. Code §§ 47-2002(3)(A), 47-2003(*a*). (The District's compensating-use tax on retail sales of food and beverages is inapplicable when the sales tax is "properly collected." § 47-2202(3)(A).) Until the 1990s, the District had not sought to collect sales or use taxes on food-service transactions at the Bank. Matters changed when, in 1991, shortly after the Bank's contract renegotiation, Marriott twice requested letter rulings from the District's Department of Finance and Revenue regarding the tax status of its food-service operations at the Bank and at the International Monetary Fund. The District responded that cafeteria and vending sales by outside contractors on the premises of international organizations were subject to local sales taxes when the sales were made to employees of the organizations rather than to the organizations themselves.

Marriott's contract lapsed in 1992 and the Bank entered into a new arrangement with Gardner Merchant Food Services, Inc. This contract slightly modified the profit-and-loss arrangement the Bank had with Marriott: Gardner Merchant was to "be allowed profits not to exceed 2 per cent of revenue"; anything in excess of 2 per cent went to the Bank;[1] Gardner Merchant was entitled to general and administrative costs not to exceed 3 per cent of revenue, but it was to be responsible for "pay[ing] out all expenses" and it assumed the risk of "any resultant losses". The contract set forth Gardner Merchant's independent status: "Contractor will, in all its dealings, make it clear that it is an independent contractor to the Bank, and the Contractor and its employees are neither agents, representatives, nor employees of the Bank." Gardner Merchant was to maintain its own records and hold the Bank harmless for any losses arising out of its services.

A provision in the contract purported to extend to Gardner Merchant the Bank's immunity from the collection and payment of taxes:

> "The Bank is exempt from payment of sales, use and excise taxes and shall provide Contractor with tax exemption certification as may be required from time to time. The Bank, and the Contractor acting on the Bank's behalf, are also exempt from collecting such taxes from staff and other user's [sic] of the Bank's food services."

Relying on this provision, Gardner Merchant neither collected nor paid any District of Columbia sales or use taxes in performing its food-service contract.

In March 1996, the District's Department of Finance and Revenue conducted a general audit of Gardner Merchant's records and discovered a tax deficiency. For the tax years 1994 and 1995, the District sought to recover from Gardner Merchant back taxes of $351,396.73, penalties of $158,128.55 and interest of $179,212.33, for a total of $688,737.61. On May 22, 1997, the Bank paid to the District approximately $680,000.00 to satisfy Gardner Merchant's deficiency and, on the same day, filed suit to recover that amount from the District.[2] On cross-motions for summary judgment, the district court ruled in the Bank's favour.

The district court held that Gardner Merchant's operation of the food-service programme fell within the scope of the "operations and transactions" for which the Bank enjoys tax immunity. *See International Bank for Reconstruction & Dev. v. District of Columbia*, 996 F. Supp.31, 35 (D.D.C. 1998). The Bank's president is empowered to conduct "the ordinary business of the Bank." *Id.* at 34 (citing article V, § 5(*b*) of the Bank's Articles of Agreement). Although the Articles do not expressly state that providing on-site food services is part of the Bank's "ordinary business", the district court thought it must be: because the Bank's president has responsibility over the "organization, appointment and dismissal of the [Bank's] officers and staff," article V, § 5(*b*), "[i]t would make no sense to give the President responsibility for the 'organization ... of the officers and staff,' but deny him the authority to provide for the daily food needs of that staff." 996 F.Supp. at 35.

The court observed that the food programme would enjoy tax immunity if the Bank itself had operated it. *Id.* The District, while not disputing this, takes issue with the conclusion the court then drew: if the District imposed a tax on the Bank's food programme simply because the Bank chose to engage an outside contractor rather than run the programme itself, this would constitute an impermissible intrusion into the Bank's decision-making processes. *Id.* In the court's view, such interference would contravene the statutory independence of the World Bank and other international organizations, *see* Articles of Agreement, article V, § 5(*c*); 22 U.S.C. § 288, an independence this court recognized in *Atkinson v. Inter-American Dev. Bank*, 156 F.3d 1335, 1337 (D.C. Cir. 1998), holding that an international organization was not subject to a garnishment proceeding. *See also Mendaro v. World Bank*, 717 F.2d 610, 615 (D.C. Cir. 1983); *Broadbent v. OAS*, 628 F.2d 27, 34 (D.C. Cir. 1980).

The district court seemed to believe, perhaps as an alternative ground of decision, that it would be inequitable for D.C. to collect taxes from Gardner Merchant retroactively for the years 1994 and 1995. *See International Bank*, 996 F.Supp. at 38-39. According to the court, "[t]he District has by its inaction over the last 30 years led the Bank to reasonably believe that its tax immunity would preclude the imposition of tax liability on third-party operators of the Bank cafeteria." *Id.* at 38. In the court's view, the District produced no credible evidence that either Gardner Merchant or the Bank itself had been on notice of the District's intention to impose such taxes for the years 1994 and 1995.

II

Like the Constitution and federal statutes, treaties made under the authority of the United States are the "supreme Law of the Land." U.S. Const. art. VI. Whether the World Bank's tax immunity extends to Gardner Merchant's retail sales operations therefore depends on the terms of the treaty—on the terms, that is, of the Articles of Agreement.

As to article VII, § 9(*a*), quoted above, we can put to one side the Bank's tax immunity regarding its "assets, property and income". The District is not seeking to impose taxes on those items. We also can disregard the Bank's immunity from liability "for the collection or payment of any tax or duty". The liability for the collection and payment of the District's taxes, to the extent any exists, is Gardner Merchant's alone. Thus, if Gardner Merchant shares the Bank's tax immunity, this can only be on the basis that the District has imposed its sales and use taxes on the Bank's "operations and transactions authorized by" the Agreement.

The District and the Bank quarrel about whether a cafeteria in the Bank's D.C. office building constitutes an "operation" of the Bank. For its part, the District points to article IV, entitled "Operations". This provision lays out in considerable detail the Bank's authority to make loans and borrow funds, to set terms and conditions on its loans, to relax the schedule of payments, to guarantee loans, to set aside a special reserve and so forth. Nothing in article IV appears to contemplate treating a cafeteria as an "operation". On the other hand, the Bank and the district court stress the authority given the Bank's president to "conduct, under the direction of the Executive Directors, the ordinary business of the Bank". Art. V, § 5(*b*). The Bank's president decided to provide in-house food and beverage service at the Bank's headquarters. Food service therefore must be considered part of the Bank's "ordinary business". If "ordinary business" constitutes an "operation" for which the Bank is immune from taxation, then the District cannot impose its taxes.

We think framing the dispute this way misses an essential question. The treaty provides that the "*Bank*, ... and *its* operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The *Bank* shall also be immune from liability for the collection or payment of any tax or duty." Article VII, § 9(*a*) (emphasis added). We may assume that having a cafeteria on its premises is within the Bank's authority under the Articles. We may also assume that the Bank, through its officers, may decide to provide this service in any way it sees fit. But the question remains: is the provision of food services an "operation" of the *Bank*? The answer depends not so much on how essential the Bank believes the activity to be, but on the arrangements the Bank has made to carry it out. Take, for instance, janitorial services. The Bank needs to have its offices cleaned and maintained. Every business does. Suppose the Bank hires an outside contractor to perform these services. Although the Bank itself is immune from the National Labor Relations Act, its cleaning contractor may not be, and we so held in *Herbert Harvey, Inc. v. NLRB*, 424 F.2d at 779. To take an example closer to home, the operations of the federal courts cannot be taxed by a state. But if an outside contractor runs a cafeteria in the courthouse, state sales taxes may be imposed, and are.

Here, the district court found, and the Bank concedes, that Gardner Merchant is "a separate and independent entity". *International Bank*, 996 F.Supp. at 34. It is responsible in every respect for food preparation and sales, and it bears any losses that arise from those sales.[3] It hires its own employees and maintains its own records. It has its own commercial objectives, including making a profit from its contract with

the Bank. If the sales tax applied, the Bank would neither collect nor incur liability for paying any District of Columbia tax when a Bank employee or guest purchased food from Gardner Merchant. The Bank stands wholly outside these transactions. The legal incidence of the tax would not fall on the Bank. Gardner Merchant would be responsible for remitting the tax to the District and Gardner Merchant would collect the sales tax from its customers. Whether the customers would entirely bear the corresponding reduction in wealth is a question of economics, depending on another law, that of supply and demand. *See* Armen A. Alchian & William R. Allen, Exchange & Production: Competition, Coordination & Control 67-68 (3d ed. 1983).

As against this, the Bank stresses the general rule that agreements among nations should be construed more liberally than private agreements. *See* Brief for Appellee at 24 (citing *Eastern Airlines, Inc. v. Floyd*, 499 U.S. 530, 535 (1991); United States v. Stuart, 489 U.S. 353, 368 (1989)). From this it concludes that the tax immunity provision should be understood to include third-party transactions such as those involved here. We do not think the conclusion follows. We may not read international treaties so broadly as to create unintended benefits or to reach parties not within the scope of a treaty's language. *See Maximov v. United States*, 373 U.S. 49, 55-56 (1963). "Operations" and "transactions" may have a broad sweep, but the terms are qualified by the pronoun "its", which refers to the Bank. The immunity provision cannot be read to include within its scope activities conducted by any other entity. Transactions conducted by independent contractors are not mentioned in article VII, § 9, and we have seen no evidence that the Articles of Agreement were meant to shield private entities from tax liability arising from their contracts with the World Bank. In this regard we view it as significant that the United States, as a signatory to the Articles of Agreement, has not seen fit to support the Bank's claim that article VII would immunize its private contractors from the District's sales tax.[4] We view as not significant the statements offered by the Bank—one from an official at the European Bank for Reconstruction and Development and another from an administrative services manager at the Asian Development Bank—attesting that the Governments of the United Kingdom of Great Britain and Northern Ireland and the Philippines do not tax cafeteria sales at those two banks. The statements contain no detail, and so we do not know whether, for instance, the Asian Development Bank uses an outside contractor, whether there is a tax on food purchases in the Philippines, whether the authorities in London or Manila are refraining on the basis of a legal conclusion regarding the applicable treaties, or whether the treaties are comparable to the Articles of Agreement.[5]

The Bank also invokes *Carson v. Roane-Anderson Co.*, 342 U.S. 232 (1952). The State of Tennessee had collected sales and use taxes from independent contractors performing services for the Atomic Energy Commission at Oak Ridge. The Court allowed the contractors to recover the amounts paid, holding that their contracts entitled them to enjoy the benefits of the Commission's tax immunity under the Atomic Energy Act of 1946.[6] (Congress "overruled" the decision one year later, eliminating the tax immunity. *See United States v. Boyd*, 378 U.S. 39, 40 (1964).) The Bank argues that since the services of the independent contractors in *Carson* fell within the statutory term "activities", Gardner Merchant's operation of the food service programme falls within the treaty's phrase "operations and transactions".

We do not find *Carson* dispositive. For one thing, Carson involved different language: "activities" are not "operations and transactions authorized by [the World Bank's] Agreement". To the Supreme Court, the "meaning of 'activities' as applied either to an individual or to a government agency may be broad enough to include

what is done through independent contractors as well as through agents." *Id.* at 236. The case thus turned on whether Congress meant the term to have that broader meaning. On this score, the Court relied on other provisions of the statute using "activities" in its broader sense and on the fact that Congress expressly authorized the Commission to use private contractors in managing its affairs: "Certainly where the pattern of conduct visualized by the Act is the use of independent contractors or agents from the field of private enterprise, the inference is strong that 'activities' means all authorized methods of performing the governmental function." *Id.* No such "strong" inference is present here. Indeed we see no basis for any inference, strong or weak, that the Bank's operations include the activities of private contractors. Nothing in the Articles of Agreement indicates that the signatories contemplated having the Bank retain independent contractors to perform its lending operations.[7]

As against this, the Bank maintains that because it would be immune from the District's sales tax if it had run the food programme itself, the same immunity attaches when it engages an independent contractor to perform the service. *See* Brief for Appellee at 26. Otherwise, the argument continues, local taxes would interfere with the Bank's "internal functions" and affect its decisions about how best to serve its workforce. *Id.* The argument has a familiar ring, and there was a time when it might have carried the day. Chief Justice Marshall said in *McCulloch v. Maryland*, that "the power to tax involves the power to destroy." 17 U.S. (4 Wheat.) 316, 431 (1819). Taking this "seductive *cliché*"[8] to heart, the Supreme Court early in this century began conferring immunity from state taxes on so-called "instrumentalities" of the federal Government, that is, on private contractors performing work for the Government. This derivative tax immunity rested partly on the notion that if the federal Government had undertaken the activity itself, the state could not have taxed it, and partly on the basis that tax immunity for private entities was needed to protect the United States from state interference. Many of the cases handed down in this area are discussed in *James v. Dravo Contracting Co.*, 302 U.S. 134 (1937), and in Thomas Reed Powell, *The Waning of Intergovernmental Tax Immunities*, 58 Harv. L. Rev. 633 (1945). In upholding a state tax on the gross receipts of a federal contractor, *James v. Dravo Contracting Co.* marked a turning point in the Court's approach: henceforth application of non-discriminatory state taxes on Government instrumentalities, with only a remote influence on governmental functions, would be sustained. 302 U.S. at 150.

The Supreme Court's modern jurisprudence on the tax immunities of government "instrumentalities" is instructive for several reasons. It seems to us doubtful that the Articles of Agreement were intended to confer on the World Bank a wider immunity from state and local taxes than that enjoyed by the federal Government.[9] Under the terms of the Bretton Woods Agreement, all concerned knew that the World Bank's headquarters would be located in the United States. Article V, § 9, provided that the "principal office of the Bank shall be located in the territory of the member holding the greatest number of shares", and that member was the United States. *See* Articles of Agreement, Schedule A. In the mid-1940s, when article VII, § 9, was drafted and accepted, those naturally interested in the analogous subject of federal immunity from state taxation would have discovered the line of Supreme Court decisions, such as *James* and *Helvering v. Mountain Producers Corp.*, 303 U.S. 376 (1938), refusing to maintain the tax immunity of private contractors performing work for the United States. They would have known as well that the United States had taken the position that any "attempt to distinguish between the vary-

ing types of taxes imposed on private persons, according as they interfere with the sovereign, is to perpetuate a rule which has proved to be unsatisfactory and inconsistent." Brief for the United States as *Amicus Curiae*, at p. 44, in *James v. Dravo Contracting Co.*

With all of this in mind, we return to the Bank's argument that Gardner Merchant should be free of the District's sales tax because the Bank would not have been subject to the tax if it had operated the cafeteria itself. If, instead of the World Bank, the United States had made this argument on behalf of one of its contractors, the Supreme Court would have rejected it: "tax immunity is appropriate in only one circumstance: when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." *United States v. New Mexico*, 455 U.S. 720, 735 (1982); *see also Arizona Dep't of Revenue v. Blaze Constr. Co.*, No. 97-1536, 1999 WL 100899 (U.S. Mar. 2, 1999). We can think of no reason, certainly none stemming from the principles governing the construction of international treaties, why similar logic should not apply to the interpretation of the Bank's Articles of Agreement. The District of Columbia's sales and use taxes are not imposed upon the Bank, but upon Gardner Merchant and its customers. Gardner Merchant is by no stretch an instrumentality of the Bank. Nor is Gardner Merchant "so closely connected to the [Bank] that the two cannot realistically be viewed as separate entities".[10] Although the Bank exercises close control over the terms of the contract and Gardner Merchant's performance under it, that does not transform Gardner Merchant into an instrumentality of the Bank. As we mentioned, Gardner Merchant is pursuing private ends for its own benefit. *See New Mexico*, 455 U.S. at 739-740; *Boyd*, 378 U.S. at 48. Imposing the tax on Gardner Merchant will not impermissibly intrude on the Bank's freedom from local government control. On the contrary, imposing the tax will merely require the Bank to take an additional factor into account when it negotiates its food-service contract. *Cf. Boyd*, 378 U.S. at 48. It will exert "a remote, if any, influence upon the exercise of the functions of [the Bank]". *James v. Dravo Contracting Co.*, 302 U.S. at 150 (internal quotation omitted). On the other hand, to hold that the Bank's tax immunity extends to Gardner Merchant's food-service transactions would create an ever-expanding tax immunity without any limiting principle. Must Gardner Merchant pay sales and use taxes on purchases *it* makes pursuant to its contract with the World Bank? Should the company be free from District income taxes? Should the company's employees? These and many other similar questions continually perplexed the Supreme Court after it ventured onto the slippery slope of derivative tax immunity. *See, e.g., Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 173-175, 187 (1989); *South Carolina v. Baker*, 485 U.S. 505, 520 (1988). We decline the Bank's invitation to set out on the same precipitous course.

III

The Bank has an alternative position: even if the District of Columbia has the power to impose the disputed taxes on Gardner Merchant, it would be inequitable under the Articles of Agreement for the District to impose them retroactively. The Bank does not contend that the District is equitably estopped from collecting the taxes because of its prior policy of refraining from collecting them. *See* Brief for Appellee at 36 n.9; *see also Automobile Club v. Commissioner*, 353 U.S. 180, 183 (1957). Rather, the Bank adopts the position of the United States in the District Court that the retroactive imposition of the District sales tax would be inequitable

under the terms of the Bank's treaty. The idea is that in relying in good faith on its interpretation of the Articles, and the District's prior practice, the Bank entered into the food-service contract promising tax immunity to its contractor; hence, retroactive taxation constitutes taxation of the Bank itself, in violation of article VII, § 9. The district court seemed to agree, but it also appeared to base its holding at least in part on principles of equitable estoppel: the court noted that D.C. had refrained from imposing the tax on Bank food-service operators for 30 years, and that the Bank had no notice when the District changed course in the early 1990s. *See* 996 F.Supp. at 38-39.

We neither endorse nor reject the view of the United States, as set forth by the Bank. The district court rendered its decision on summary judgment. It is not clear whether the factual predicate for the Bank's argument exists. Given the procedural posture of the case, the District was entitled to all justifiable inferences. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-250 (1986). The district court observed that the District had cited "only two instances in 30 years where it claims to have informed an international organization that it would collect sales and use taxes for cafeteria sales recorded by a contractor." 996 F. Supp. at 39. Although the District may not have produced any evidence that the Bank was aware of the two letters it sent to Marriott, there is a genuine issue of material fact whether the Bank knew of the District's policy with regard to imposing the tax in such cases. A February 1994 letter to the State Department from an attorney in the Bank's legal department stated that the attorney was aware as early as December 1993 of the District's "new position that the World Bank, and the catering firms that act on its behalf, should begin collecting sales tax from staff who purchase meals in the Bank's employee cafeterias." From this letter, one might reasonably infer that the Bank knew of the District's decision to impose the taxes before 1994. This tends to undercut the Bank's equitable claim. The Bank complains that the letter should not have been included in the record; the District counters that the Bank cited the letter in its brief and therefore should be deemed to have waived any procedural objection to it. This is but one of several issues we must leave to the district court.

* * *

We therefore hold that Gardner Merchant, in performing its food service contract at the World Bank's headquarters, did not share the Bank's immunity from the District's sales and use taxes. The order granting summary judgment is reversed and the case is remanded for further proceedings on the Bank's equitable argument.

So ordered.

NOTES

[1] The record does not disclose whether the Bank actually received any profits for the years covered by the Gardner Merchant contract

[2] The District makes nothing of the point that although the Bank paid the taxes and is suing to recoup its payment, the Bank itself incurred no liability under District law.

[3] Although the Gardner Merchant contract contains much detail about the nature of the food programme and allows the Bank to monitor closely for compliance, these contractual provisions do not affect our view that the contractor is independent of the Bank.

[4] In May 1997, the United States State Department informed the District by letter of the Government's view that imposing the disputed taxes retroactively would be "inequitable and

inconsistent with" article VII, § 9. The idea appeared to be that the Bank had been lulled into believing that its contractor had tax immunity and so had agreed to hold Gardner Merchant harmless from tax liability. The letter concluded that it was "without prejudice to the views of the United States Government with respect to the question of whether the prospective collection of sales tax by a World Bank contractor from Bank staff and guests who do not enjoy personal sales-tax privileges is permissible under the Articles of Agreement." Although the United States filed an amicus brief in the district court taking the same position, it has not presented its views to this court.

[5] We also place no weight on the statement of the New York Department of Taxation and Finance that if the World Bank had an independent contractor operate a cafeteria for it within the Headquarters of the United Nations, food sales would be subject to New York State and local sales tax.

[6] Section 9(*b*) of the Act then provided that "[t]he Commission, and the property, activities and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any State ..." *Carson*, 342 U.S. at 233.

[7] The Bank attempts to broaden the reach of *Carson* by arguing that its outcome did not depend upon the Atomic Energy Act's express provision for the use of independent contractors. We disagree with such a reading. The *Carson* Court rested its decision precisely on that ground. As the Court interpreted the Act, Congress anticipated that the Commission would perform its functions through independent contractors. *See id.* at 236.

[8] *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 489 (1939) (Frankfurter, J., concurring).

[9] The tax immunity of international organizations is based on a principle analogous to the one upon which Chief Justice Marshall relied in *McCulloch*: to protect against the destructive power of State interference. *See, e.g., Broadbent*, 628 F.2d at 34 ("[I]nternational organizations must be free to perform their functions and ... no member State may take action to hinder the organization.").

[10] The Bank does not contend that the District's sales and use taxes are discriminatory.

Part Four

BIBLIOGRAPHY

LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

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

A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL

1. *General*

Allott, Philip. The concept of international law. *European journal of international law* 10(1) 1999:31-50.

Carreau, Dominique. *Droit international.* 6e éd. (Paris: A. Pedone, 1999). xxvii, 676 p.
Includes indexes.

Decaux, Emmanuel. *Droit intenational public.* 2e éd. (Paris: Dalloz, 1999). vi, 230 p.

Nguyen Quoc Dinh, Patrick Daillier and Alain Pellet. *Droit international public.* 6e éd. (Paris: Librairie générale de droit et jurisprudence, 1999). 1455 p.
Bibliography: p. 11-24. Includes index.

The reality of international law: essays in honour of Ian Brownlie. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). 592 p.
Includes bibliographical references and index.

Sinkondo, Marcel. *Droit international public* (Paris: Ellipses, 1999). 508 p.
Includes bibliographical references and index.

"Symposium on method in international law". Edited by Steven R. Ratner and Anne-Marie Slaughter. *American journal of international law* 93(2) April 1999:291-423.
Series of articles. Includes bibliographical references.

Die Vereinten Nationen: Recht und Praxis. Edited by Franz Cede and Lilly Sucharipa-Bernmann. (Vienna: Manzsche Verlags- und Universitatsbuchlandung, 1999). xxiv, 325 p.
Some material in English. Includes bibliographical references and index.

2. *Particular questions*

Bandekas, Ilias. The Pinochet affair in international law. *Revue hellénique de droit international,* 52ème année (1) 1999:119-129.
Includes bibliographical references.

Bianchi, Andrea. Immunity versus human rights: the *Pinochet* case. *European journal of international law* 10(2) 1999:237-277.
Includes bibliographical references.

Boldizar, Alexander, and Outi Korhonen. Ethics, morals and international law. *European journal of international law* 10(2) 1999:279-311.
Includes bibliographical references.

Bradley, Curtis A., and Jack L. Goldsmith. *Pinochet* and international human rights litigation. *Michigan law review* 97(7) June 1999:2129-2184.
Includes bibliographical references.

Bröhmer, Jürgen. Diplomatic immunity, head of state immunity, state immunity: misconceptions of a notorious human rights violator. *Leiden journal of international law* 12(2) 1999:361-371.
Includes bibliographical references.

Busuttil, James J. A taste of Armageddon: the law of armed conflict as applied to cyberwar. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 37-56.
Includes bibliographical references.

Byers, Michael. *Custom, power and the power of rules: international relations and customary international law* (Cambridge, England; New York: Cambridge University Press, 1999). xxii, 250 p.
Bibliography: p. 222-246. Includes index.

Caldwell, Lynton K. Is world law an emerging reality? Environmental law in a transnational world. *Colorado journal of international environmental law and policy* 10(2) summer 1999:227-243.
Includes bibliographical references.

Chemillier-Gendreau, Monique. Principe d'égalité et libertés fondamentales en droit international. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 659-669.
Includes bibliographical references.

Contemporary practice of the United States relating to international law. Edited by Sean D. Murphy. *American journal of international law* 93(2) April 1999:470-501.
Includes bibliographical references.

Contemporary practice of the United States relating to international law. Edited by Sean D. Murphy. *American journal of international law* 93(3) July 1999:628-667.
Includes bibliographical references.

Contemporary practice of the United States relating to international law. Edited by Sean D. Murphy. American journal of international law 93(4) October 1999:879-912.
Includes bibliographical references.

Corten, Olivier. The notion of "reasonable" in international law: legal discourse, reason and contradictions. *International and comparative law quarterly* 48(3) July 1999:613-625.
Includes bibliographical references.

Cosnard, Michel. Quelques observations sur les décisions de la Chambre des Lords du 25 novembre 1998 et du 24 mars 1999 dans l'affaire Pinochet. *Revue générale de droit international public* 103(2) 1999:309-328.
Includes bibliographical references.

Cullet, Philippe. Differential treatment in international law: towards a new paradigm of inter-state relations. *European journal of international law* 10(3) 1999:549-582.
Includes bibliographical references.

Culmer, David H. The cross-border insolvency concordat and customary international law: Is it ripe yet? *Connecticut journal of international law* 14(2) fall 1999:563-591.
Includes bibliographical references.

Dominicé, Christian. Quelques observations sur l'immunité de juridiction pénale de l'ancien chef d'Etat. *Revue générale de droit international public* 103(2) 1999:297-308.
Includes bibliographical references.

Dugard, John. Dealing with crimes of a past regime. Is amnesty still an option? *Leiden journal of international law* 12(4) 1999:1001-1015.
Includes bibliographical references.

Dunoff, Jeffrey L., and Joel P. Trachtman. Economic analysis of international law. *Yale journal of international law* 24(1) winter 1999:1-59.
Includes bibliographical references. Bibliography: p. 56-59.

Falk, Richard. The pursuit of international justice: present dilemmas and an imagined future. *Journal of international affairs* 52(2) spring 1999:409-441.
Includes bibliographical references.

Fidler, David P. *International law and infectious diseases* (Oxford: Clarendon Press; New York: Oxford University Press, 1999). xlvii, 364 p.
Bibliography: p. 337-355. Includes index.

Fletcher, Ian F. *Insolvency in private international law: national and international approaches* (Oxford: Clarendon Press, 1999). lxvii, 465 p.
Includes bibliographical references (p. 454-455) and index.

Freeman, Marsha A. International institutions and gendered justice. *Journal of international affairs* 52(2) spring 1999:513-532.
Includes bibliographical references.

Gamble, John King. New information technologies and the sources of international law: convergence, divergence, obsolescence and/or transformation. *German yearbook of international law*, vol. 41 (1998):170-205.
Includes bibliographical references.

Goodwin-Gill, Guy S. Crime in international law: obligations *erga omnes* and the duty to prosecute. In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 199-223.
Includes bibliographical references.

Green, Leslie C. *Essays on the modern law of war.* 2nd ed. (Ardsley, N.Y.: Transnational Publishers, Inc., 1999). 604 p.
Includes bibliographical references and index.

Gunther, Carsten Alexander. *Die Klagebefugnis der Staaten in internationalen Streitbeilegungsverfahren* (Cologne: C. Heymanns, 1999). xxi, 306 p.
Includes bibliographical references (p. 281-303) and index.

Hillgenberg, Hartmut. A fresh look at soft law. *European journal of international law* 10(3) 1999:499-515.
Includes bibliographical references.

Hirose Kawaguchi, Kazuko. The legality of the threat of use of nuclear weapons and the logic of nuclear deterrence: a legal-sociological analysis. *Proceedings (American Society of International Law, Meeting)*. 93rd (1999):279-287.
Includes bibliographical references.

Holding state sovereigns accountable for human rights violations: applying the act of state doctrine consistently with international law. *Maryland journal of international law and trade* 23(1) spring/summer 1999:187-211.
Includes bibliographical references.

Horowitz, Jodi. *Regina v. Bartle and the Commissioner of police for the metropolis and others ex parte Pinochet*: Universal jurisdiction and sovereign immunity for *jus cogens* violations. *Fordham international law journal* 23(2) December 1999:489-527.
Includes bibliographical references.

International law and The Hague's 750th anniversary. Edited by Wybo P. Heere (The Hague: T.M.C. Asser Press, 1999). xi, 466 p.
Includes bibliographical references and index.

Kaikobad, Kaiyan Homi. The quality of justice: "excès de pouvoir" in the adjudication and arbitration of territorial and boundary disputes. In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 293-321.
Includes bibliographical references.

Liber Amicorum Judge Mohammed Bedjaoui. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). xxi, 790 p.
Includes bibliographical references.

Mehren, Robert B. von. An international arbitrator's point of view. *The American review of international arbitration* 10(2) 1999:203-214.
Includes bibliographical references.

Mendelson, M. H. The formation of customary international law. *Recueil des cours (Hague Academy of International Law)*, vol. 272 (1998):155-410.
Includes bibliographical references.

Murphy, Sean D. Contemporary practice of the United States relating to international law. *American journal of international law* 93(1) January 1999:161-194.
Includes bibliographical references.

_____. Democratic legitimacy and the recognition of states and governments. *International and comparative law quarterly* 48(3) July 1999:545-581.
Includes bibliographical references.

Ofosu-Amaah, W. Paatii, Raj Soopramanien and Kishor Uprety. *Combating corruption: a comparative review of selected legal aspects of state practices and major international initiatives* (Washington, D.C.: World Bank, 1999). viii, 114 p.
Includes bibliographical references.

Orford, Anne. Embodying internationalism: the making of international lawyers. *Australian year book of international law*, vol. 19 (1998):1-34.
Includes bibliographical references.

Park, William W. Duty and discretion in commercial arbitration. *American journal of international law* 93(4) October 1999:805-823.
Includes bibliographical references.

Pisillo Mazzeschi, R. Flussi di rifugiati e responsabilità dello Stato di origine. *Rivista di diritto internazionale* LXXXII(3) 1999:621-646.
Includes bibliographical references.

Polat, Necati. International law, the inherent instability of the international system, and international violence. *Oxford journal of legal studies* 19(1) spring 1999:51-70.
Includes bibliographical references.

The protection and promotion of e-commerce: should there be a global regulatory scheme for digital signatures? *Fordham international law journal* 22(3) March 1999:1002-1063.
Includes bibliographical references.

Rigaux, François. Le concept de territorialité: un fantasme en quête de réalité. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 211-222.
Includes bibliographical references.

Riles, Annelise. Models and documents: artifacts of international legal knowledge. *International and comparative law quarterly* 48(4) October 1999:805-825.
Includes bibliographical references.

Rogers, John M. *International law and United States law* (Aldershot, Brookfield, VT: Ashgate, 1999). 242 p.
Includes bibliographical references and index.

Roht-Arriaza, Naomi. Institutions of international justice. *Journal of international affairs* 52(2) spring 1999:473-491.

Includes bibliographical references.

Romano, Cesare P. R. The proliferation of international judicial bodies: the pieces of the puzzle. *New York University journal of international law and politics* 31(4) summer 1999: 709-751.

Includes bibliographical references.

Roth, Brad R. *Governmental illegitimacy in international law* (Oxford: Clarendon Press, 1999). xxx, 439 p.

Thesis (Doctoral), University of California (Berkeley). Includes bibliographical references and index.

Roucounas, Emmanuel. Time limitations for claims and actions under international law. In: *Liber Amicorum Judge Mohammed Bedjaoui.* Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 223-240.

Includes bibliographical references.

Schneider, Andrea Kupfer. Getting along: the evolution of dispute resolution regimes in international trade organizations. *Michigan journal of international law* 20(4) summer 1999: 697-773.

Includes bibliographical references.

Seidl-Hohenveldern, Ignaz. Activities of staff unions in international organizations. In: *Liber Amicorum Judge Mohammed Bedjaoui.* Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 603-614.

Includes bibliographical references.

Sharp, Walter Gary. *Cyberspace and the use of force* (Falls Church, Va.: Aegis Research Corp., 1999). xiv, 234 p.

Includes bibliographical references and index.

Sprecher, Drexel A. *Inside the Nuremberg Trial: a prosecutor's comprehensive account* (Lanham, Md.: University Press of America, 1999). 2 v.

Includes bibliographical references (p. 1549-1557) and index.

State responsibility and the individual: reparation in instances of grave violations of human rights. Edited by Albrecht Randelzhofer and Christian Tomuschat (The Hague; London: Martinus Nijhoff Publishers, 1999). xii, 296 p.

Includes bibliographical references and index.

Strebel, Felix D. The enforcement of foreign judgments and foreign public law. *Loyola of Los Angeles international and comparative law journal* 21(1) March 1999:55-129.

Talmon, Stefan. Who is a legitimate government in exile? Towards normative criteria for governmental legitimacy in international law. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 499-537.

Includes bibliographical references.

Van den Wyngaert, Christine and Guy Stessens. The international *non bis in idem* principle: resolving some of the unanswered questions. *International and comparative law quarterly* 48(4) October 1999:779-804.

Includes bibliographical references.

Yakpo, E. K. M. The African concept of *uti possidetis*—Need for change? In: *Liber Amicorum Judge Mohammed Bedjaoui.* Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 271-290.

Includes bibliographical references.

B. UNITED NATIONS

1. *General*

Annan, Kofi. Intervention. *Medicine conflict and survival* 15(2) April-June 1999:115-125.

Kell, Georg. Weltorganisation und Wirtschaftswelt: Globaler Pakt für das nächste Jahrhundert. *Vereinte Nationen* 47(5) Oktober 1999:163-168.

Lorenz, Joseph P. *Peace, power, and the United Nations: a security system for the twenty-first century* (Boulder, Colo.: Westview Press, 1999). xi, 185 p.
Bibliography: p. 171-176. Includes index.

Szasz, Paul C. The complexification of the United Nations System. *Max Planck yearbook of United Nations law*, vol. 3 (1999):1-57.
Includes bibliographical references.

2. *Particular organs*

General Assembly

Halvorssen, Anita M. The UN General Assembly's special session on small island developing states—sustainable development in a nutshell. *Colorado journal of international environmental law and policy: yearbook*, 1999:113-126.
Includes bibliographical references.

International Court of Justice

Aznar-Gómez, Mariano J. The 1996 nuclear weapons advisory opinion and *non liquet* in international law. *International and comparative law quarterly* 48(1) January 1999:3-19.
Includes bibliographical references.

Bedi, Shiv R. S. African participation in the International Court of Justice—a statistical appraisal (1946-1998). *African yearbook of international law*, vol. 6 (1998):181-222.
Includes bibliographical references.

Couvreur, Philippe. Développements récents concernant l'accès des organisations intergouvernamentales à la procédure contentieuse devant la Cour internationale de Justice. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 293-323.
Includes bibliographical references.

David, Marcella. Passport to justice: internationalizing the political question doctrine for application in the World Court. *Harvard international law journal* 40(1) winter 1999:81-150.
Includes bibliographical references.

Djajic, Sanja. The effect of International Court of Justice decisions on municipal courts in the United States: *Breard v. Greene. Hastings international and comparative law review* 23(1) fall 1999:27-108.
Includes bibliographical references.

Doussis, Emmanuella. L'intérêt juridique comme condition de l'intervention devant la Cour internationale de Justice. *Revue hellénique de droit international,* 52ème année (2) 1999: 281-320.
Includes bibliographical references.

Dupuy, Pierre-Marie. The danger of fragmentation or unification of the international legal system and the International Court of Justice. *New York University journal of international law and politics* 31(4) summer 1999:791-807.
Includes bibliographical references.

Elias, Olufemi, and Chin Lim. *The Right of Passage* doctrine revisited: an opportunity missed. *Leiden journal of international law* 12(1) 1999:231-245.
Includes bibliographical references.

Ghozali, Nacer-Eddine. L'avis consultatif de la Cour internationale de Justice (CIJ) sur l'emploi des armes nucléaires: un avis inabouti. *Revue internationale et stratégique*, No. 33, spring 1999:119-127.
Summary in English.

Gill, Terry. The nuclear weapons advisory opinion of the International Court of Justice and the fundamental distinction between the *jus ad bellum* and the *jus in bello*. *Leiden journal of international law* 12(3) 1999:613-624.
Includes bibliographical references.

Guillaume, Gilbert. La "cause commune" devant la Cour internationale de Justice. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 325-341.
Includes bibliographical references.

Head, David. Going to court not war. *Medicine conflict and survival* 15(2) April-June 1999: 149-156.
Includes bibliographical references.

Higgins, Rosalyn. The International Court of Justice and Africa. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 343-369.
Includes bibliographical references.

International law, the International Court of Justice, and nuclear weapons. Edited by Laurence Boisson de Chazournes, Philippe Sands (Cambridge, England; New York: Cambridge University Press, 1999). xxiii, 592 p.
Includes bibliographical references (p. 581-582) and index.

Kiss, Alexandre-Charles. The International Court of Justice and the protection of the environment. *Hague yearbook of international law*, vol. 11 (1998):1-13.
Includes bibliographical references.

Kovács, Péter. Quelques considérations sur l'appréciation et l'interprétation de l'arrêt de la Cour internationale de Justice, rendu dans l'affaire Gabcikovo-Nagymaros. *German yearbook of international law*, vol. 41 (1998): 252-266.
Includes bibliographical references.

Kwiatkowska, Barbara. *Cameroon v. Nigeria land and maritime boundary (preliminary objections)* judgment of 11 June 1998. *Hague yearbook of international law*, vol. 11 (1998): 15-41.
Includes bibliographical references.

Mani, V. S. The International Court and the humanitarian law of armed conflict. *The Indian journal of international law* 39(1) January-March 1999:32-46.
Includes bibliographical references.

Martenczuk, Bernd. The Security Council, the International Court and judicial review: What lessons from Lockerbie? *European journal of international law* 10(3) 1999:517-547.
Includes bibliographical references.

Murray, Ronald King. Nuclear weapons and the law. *Medicine conflict and survival* 15(2) April-June 1999:126-137.
Includes bibliographical references.

Palchetti, P. L'indicazione di misure cautelari da parte della Corte internazionale di giustizia in situazioni di estrema urgenza. *Rivista di diritto internazionale* LXXXII(3) 1999:719-728.
Includes bibliographical references.

_____. La rilevanza dell'atteggiamento degli Stati parti nell'accercamento del diritto internazionale generale da parte della Corte internazionale di giustizia. *Rivista di diritto internazionale* LXXXII(3) 1999:647-679.
Includes bibliographical references.

Ragazzi, Maurizio. International obligations *erga omnes*: their moral foundation and criteria of identification in light of two Japanese contributions. In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 455-477.
Includes bibliographical references.

Ruzie, David. L'avis consultatif de la Cour internationale de Justice du 29 avril 1999, sur demande du Conseil économique et social. *Revue générale de droit international public* 103(3) 1999:667-683.
Includes bibliographical references.

Salerno, Francesco. La demande reconventionnelle dans la procédure de la Cour internationale de Justice. *Revue générale de droit international public* 103(2) 1999:329-378.
Includes bibliographical references.

Schwebel, Stephen M. National judges and judges Ad Hoc of the International Court of Justice. *International and comparative law quarterly* 48(4) October 1999:889-900.
Includes bibliographical references.

Smis, Stefaan, and Kim Van de Borght. The advisory opinion on the legality of the threat or use of nuclear weapons. *Georgia journal of international and comparative law* 27(2) 1999:345-387.
Includes bibliographical references.

Tchivounda, Guillaume Pambou. La fonction consultative de la Cour internationale de Justice dans le cadre de l'application des traités internationaux. *Revue hellénique de droit international*, 52ème année (1) 1999:1-17.
Includes bibliographical references.

Thirlway, Hugh. Counterclaims before the ICJ: the *Genocide Convention and Oil Platforms decisions. Leiden journal of international law* 12(1) 1999:197-229.
Includes bibliographical references.

_____. The law and procedure of the International Court of Justice 1960-1989 (Part nine). *British year book of international law*, vol. 69 (1998):1-83.
Includes bibliographical references.

Torres Bernardez, Santiago. La fonction de la Cour internationale de Justice: tendances actuelles du règlement judiciaire. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 485-524.

Treves, Tullio. Conflicts between the International Tribunal for the Law of the Sea and the International Court of Justice. *New York University journal of international law and politics* 31(4) summer 1999:809-821.
Includes bibliographical references.

Vereshchetin, V. S. Is "deceptive clarity" better than "apparent indecision" in an advisory opinion? In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 531-543.
Includes bibliographical references.

Yee, Sienho. *Forum prorogatum* and the indication of provisional measures in the International Court of Justice. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 565-584.
Includes bibliographical references.

White, Nigel. To review or not to review? The *Lockerbie* cases before the World Court. *Leiden journal of international law* 12(2) 1999:401-423.
Includes bibliographical references.

Regional commissions

Baldi, Stefano, and Gianluca Sambucini. Le Nazioni Unite che non si conoscono: la Commissione Economica per l'Europa. *La Comunità internazionale* LIV(2) 1999:271-295.
Includes bibliographical references.

Secretariat

Kourula, Pirrko. Governance and co-ordination in conflict and post-conflict situations: challenge or maze? In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 351-359.
Includes bibliographical references.

Ruzie, D. La sécurité du personnel des Nations Unies recruté sur le plan local. *Journal du droit international*, 126e année, No. 2, avril-mai-juin 1999:435-444.
Includes bibliographical references.

Security Council

Bennouna, Mohamed. L'embargo dans la pratique des Nations Unies—radioscopie d'un moyen de pression. In: *Liber Amicorum Judge Mohammed Bedjaoui.* Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 555-583.
Includes bibliographical references.

Lamb, Susan. Legal limits to United Nations Security Council powers. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 361-388.
Includes bibliographical references.

Martenczuk, Bernd. The Security Council, the International Court and judicial review: What lessons from Lockerbie? *European journal of international law* 10(3) 1999:517-547.
Includes bibliographical references.

Oette, Lutz. Die Entwicklung des Oil for Food-Programms und die gegenwärtige humanitäre Lage im Irak. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 59(3) 1999:839-860.
Summary in English. Includes bibliographical references.

Oosthuizen, Gabriël. Playing the devil's advocate: the United Nations Security Council is unbound by law. *Leiden journal of international law* 12(3) 1999:549-563.
Includes bibliographical references.

Osterdahl, Inger. *Threat to the peace: the interpretation by the Security Council of Article 39 of the UN Charter* (Uppsala: Iustus Förlag, 1998). 176 p.
Includes bibliographical references (p. 140-155) and index.

Ripol Carulla, S. El Consejo de Seguridad y la defensa de los derechos humanos. Reflexiones a partir del conflicto de Kosovo. *Revista española de derecho internacional* LI(1) 1999: 59-87.

Summary in English. Includes bibliographical references.

Wahid Dahmane, Farid. Les mesures prises par le Conseil de Sécurité contre les entités non-étatiques. *African journal of international and comparative law* 11(2) June 1999: 227-244.

Includes bibliographical references.

Zemanek, Karl. Is the Security Council the sole judge of its own legality? In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 629-645.

Includes bibliographical references.

United Nations Forces

Murphy, Ray. Legal framework of UN Forces and issues of command and control of Canadian and Irish forces. *Journal of armed conflict law* 4(1) June 1999:41-73.

Includes bibliographical references.

Sambanis, Nicholas. The United Nations operations in Cyprus: a new look at the peacekeeping-peacemaking relationship. *International peacekeeping* 6(1) spring 1999:79-108.

Includes bibliographical references.

Šimunovi, Pjer. A framework for success: contextual factors in the UNTAES operation in Eastern Slavonia. *International peacekeeping* 6(1) spring 1999:126-142.

Includes bibliographical references.

3. *Particular questions or activities*

Air and space law

Baby, Laurie. Le projet de modernisation de la Convention de Varsovie: l'évolution souhaitée des limites de réparation du transporteur aérien résistera-t-elle à la cinquième juridiction? *Revue française de droit aérien et spatial 209*(1) janvier-mars 1999:5-21.

Includes bibliographical references.

Cook, Kevin V. The discovery of lunar water: an opportunity to develop a workable moon treaty. *Georgetown international environmental law review* XI(3) 1999:647-706.

Includes bibliographical references.

Establishing the extraterrestrial: criminal jurisdiction and the international space station. *Boston College international and comparative law review* XXII(2) spring 1999:323-345.

Includes bibliographical references.

Gutiérrez Espada, Cesáreo. La crisis del derecho del espacio, un desafío para el derecho internacional del nuevo siglo. *Anuario de derecho internacional*, vol. XV (1999):235-271.

Includes bibliographical references.

Jasentuliyana, Nandasiri. *International space law and the United Nations* (The Hague: Kluwer Law International, 1999). xxi, 440 p.

Includes bibliographical references and index. Bibliography: p. 415-434.

Larsen, Paul B., and Juergen A. Heilbock. UNIDROIT project on security interests: How the project affects space objects. *Journal of air law and commerce* 64(3) summer 1999: 703-770.

Includes bibliographical references.

McDougall, P. Ruari. The work of the Committee on the Peaceful Uses of Outer Space (COPUOS). *Annals of air and space law*, vol. XXIV (1999):381-391.
Includes bibliographical references.

Milde, Michael. Liability in international carriage by air—the new Montreal Convention (28 May 1999). *Uniform law review* IV(4) 1999:835-861.
Summary in French. Includes bibliographical references.

Moenter, Rochus. The international space station: legal framework and current status. *Journal of air law and commerce* 64(4) fall 1999:1033-1056.
Includes bibliographical references.

Wool, Jeffrey. The case for a commercial orientation to the proposed UNIDROIT Convention as applied to aircraft equipment. *Law and policy in international business* 31(1) 1999: 79-98.
Includes bibliographical references.

Collective security

Krisch, Nico. Unilateral enforcement of the collective will: Kosovo, Iraq, and the Security Council. *Max Planck yearbook of United Nations law*, vol. 3 (1999):59-103.
Includes bibliographical references.

Morris, Justin, and Hilaire McCoubrey. Regional peacekeeping in the post–cold war era. *International peacekeeping* 6(2) summer 1999:129-151.
Includes bibliographical references.

Nassauer, Otfried. Junger Wein in alten Schläuchen: Vereinte Nationen oder Nordatlantikpakt-Organisation? (II). *Vereinte Nationen* 47(4) August 1999:132-139.
Includes bibliographical references.

Ramón Chornet, Consuelo. La OTAN, vicaria de la ONU: reflexiones sobre el sistema de seguridad colectiva, a la luz del "nuevo concepto estratégico" acordado en Washington. *Anuario de derecho international*, vol. XV (1999):363-383.
Includes bibliographical references.

Sarooshi, Danesh. *The United Nations and the development of collective security: the delegation by the UN Security Council of its Chapter VII powers* (Oxford, Clarendon Press, 1999). xxii, 311 p.
Thesis (Doctoral), London School of Economics and Political Science, 1997. Bibliography: p. 287-305. Includes index.

Commercial arbitration

Baron, Gesa. Do the UNIDROIT principles of international commercial contracts form a new *Lex Mercatoria? Arbitration international* 15(2) 1999:115-130.
Includes bibliographical references.

Coipel-Cordonnier, Nathalie. *Les conventions d'arbitrage et d'élection de for en droit international privé* (Paris: L.G.D.J., 1999). xii, 431 p.
Includes bibliographical references (p. 375-395) and index.

Hill, Richard. On-line arbitration: issues and solutions. *Arbitration international* 15(2) 1999: 199-207.
Includes bibliographical references.

Huleatt-James, Mark, and Nicholas Gould. *International commercial arbitration: a handbook.* 2nd ed. (London: LLP, 1999). xx, 145 p.
Includes index.

Improving the efficiency of arbitration agreements and awards: 40 years of application of the New York Convention. Edited by Albert Jan van den Berg (The Hague; Boston, Mass.: Kluwer Law International, 1999). xii, 732 p.

Includes bibliographical references and index.

Maniruzzaman, Abul F. M. The *Lex Mercatoria* and international contracts: a challenge for international commercial arbitration. *American University international law review* 14(3) 1999:657-734.

Includes bibliographical references.

Marchac, Grégoire. Interim measures in international commercial arbitration under the ICC, AAA, LCIA and UNCITRAL rules. *American review of international arbitration* 10(1) 1999:123-138.

Includes bibliographical references.

Petrochilos, Georgios C. Arbitration conflict of law rules and the 1980 International Sales Convention. *Revue hellénique de droit international* 52ème année (1) 1999:191-218.

Includes bibliographical references.

_____. Enforcing awards annulled in their state of origin under the New York Convention. *International and comparative law quarterly* 48(4) October 1999:856-888.

Includes bibliographical references.

Read, Pippa. Delocalization of international commercial arbitration: its relevance in the new millennium. *American review of international arbitration* 10(2) 1999:177-201.

Includes bibliographical references.

Redfern, Alan, and Martin Hunter. *Law and practice of international commercial arbitration.* 3rd ed. (London: Sweet & Maxwell, 1999). li, 664 p.

Includes bibliographical references and index.

Consular relations

Addo, Michael K. Interim measures of protection for rights under the Vienna Convention on Consular Relations. *European journal of international law* 10(4) 1999:713-732.

Includes bibliographical references.

Angelet, Nicolas. Le droit des relations diplomatiques dans la pratique récente du Conseil de Sécurité. *Revue belge de droit international* XXXII(l) 1999:149-177.

Includes bibliographical references.

Mani, V. S. The right to consular assistance as a basic human right of aliens—a review of the ICJ order dated 3 March 1999. *Indian journal of international law* 39(3) July-September 1999:431-446.

Includes bibliographical references.

Definition of aggression

Ferencz, Benjamin B. Can aggression be deterred by law? *Pace international law review* XI(2) fall 1999:341-360.

Includes bibliographical references.

Springrose, Linda Jane. Aggression as a core crime in the Rome Statute establishing an international criminal court. *Saint Louis-Warsaw Transatlantic Law Journal* 1999:151-175.

Includes bibliographical references.

Diplomatic relations

Fox, Hazel. The advisory opinion on the difference relating to immunity from legal process of a special rapporteur of the Commission of Human Rights: who has the last word on judicial independence? *Leiden journal of international law* 12(4) 1999:889-918.
Includes bibliographical references.

Disarmament

Crawford, James, and Philippe Sands. Legal aspects of a nuclear weapons convention. *African yearbook of international law*, vol. 6 (1998):153-179.
Includes bibliographical references.

Fidler, David P. The international legal implications of "non-lethal" weapons. *Michigan journal of international law* 21(1) fall 1999:51-100.
Includes bibliographical references.

Jarreau, J. Steven. Interpreting the General Agreement on Trade in Services and the WTO instruments relevant to the international trade of financial services: the lawyer's perspective. *North Carolina journal of international law and commercial regulation* 25(1) fall 1999:1-74.
Includes bibliographical references.

Lenefsky, David. The entry-into-force provision of the Comprehensive Test Ban Treaty: an example of bad international lawyering. *New York Law School journal of international and comparative law* 19(2) 1999:255-263.
Includes bibliographical references.

Mota, Sue Ann. The World Trade Organization: an analysis of disputes. *North Carolina journal of international law and commercial regulation* 25(1) fall 1999:75-105.
Includes bibliographical references.

Nazario, Edwin J. The potential role of arbitration in the Nuclear Non-proliferation Treaty regime. *American review of international arbitration* 10(1) 1999:139-158.
Includes bibliographical references.

Pelzer, Norbert. Focus on the future of nuclear liability law. *Journal of energy and natural resources law* 17(4) November 1999:332-353.
Includes bibliographical references.

Roberts, Colonel Guy B. The counter proliferation self-help paradigm: a legal regime for enforcing the norm prohibiting the proliferation of weapons of mass destruction. *Denver journal of international law and policy* 27(3) summer 1999:483-539.
Includes bibliographical references.

Scharf, Michael P. Clear and present danger: enforcing the international ban on biological and chemical weapons through sanctions, use of force, and criminalization. *Michigan journal of international law* 20(3) spring 1999:477-521.
Includes bibliographical references.

Zedalis, Rex J. Untying the Gordian Knot: evaluating the legal dimensions of the UN Weapons Inspection Programme in Iraq and rethinking the future. *Leiden journal of international law* 12(2) 1999:297-322.
Includes bibliographical references.

Environmental questions

Ahn, Dukgeun. Environmental disputes in the GATT/WTO: before and after *US-Shrimp* Case. *Michigan journal of international law* 20(4) summer 1999:819-870.
Includes bibliographical references.

Bodansky, Daniel. The legitimacy of international governance: a coming challenge for international environmental law? *American journal of international law* 93(3) July 1999: 596-624.

Includes bibliographical references.

Boisson de Chazournes, Laurence. The global environment facility galaxy: on linkages among institutions. *Max Planck yearbook of United Nations law*, vol. 3 (1999):243-285.

Includes bibliographical references.

Campins Eritja, Mar. La acción internacional para reducir los efectos del cambio climático: el Convenio Marco y el Protocolo de Kyoto. *Anuario de derecho internacional*, vol. XV (1999):71-113.

Includes bibliographical references.

Dessai, Suraje. The Fifth Conference of the Parties to the United Nations Framework Convention on Climate Change: an advancement or derailment of the process? *Colorado journal of international environmental law and policy: yearbook*, 1999:192-207.

Includes bibliographical references.

Henne, Gudrun, and Saliem Fakir. The regime building of the Convention on biological diversity on the road to Nairobi. *Max Planck yearbook of United Nations law*, vol. 3 (1999): 315-361.

Includes bibliographical references.

International law and sustainable development: past achievements and future challenges. Edited by Alan Boyle and David Freestone (Oxford; New York: Oxford University Press, 1999). xxx, 377 p.

Includes bibliographical references and index.

"Internet symposium: Issues in modern international environmental law". *Colorado journal of international environmental law and policy* 10(2) summer 1999:227-529.

Series of articles. Includes bibliographical references.

Kempel, Willy. The negotiations on the Basel Convention on the transboundary movement of hazardous wastes and their disposal: a national delegation perspective. *International negotiation: a journal of theory and practice* 4(3) 1999:411-431.

Includes bibliographical references.

Krueger, Jonathan. *International trade and the Basel Convention* (London: Royal Institute of International Affairs: Energy and Environmental Programme/International Economics Programme: Earthscan; Washington, D.C., 1999). xx, 133 p.

Includes bibliographical references.

Lang, Winfried. UN-principles and international environmental law. *Max Planck yearbook of United Nations law*, vol. 3 (1999):157-172.

Includes bibliographical references.

Martin-Bidou, Pascale. Le principe de précaution en droit international de l'environnement. *Revue générale de droit international public* 103(3) 1999:631-666.

Summary in French, English and Spanish. Includes bibliographical references.

Nanda, Ved P. The Kyoto Protocol on climate change and the challenges to its implementation: a commentary. *Colorado journal of international environmental law and policy* 10(2) summer 1999:319-333.

Includes bibliographical references.

Okubo, Atsuko. Environmental labeling programs and the GATT/WTO regime. *Georgetown international environmental law review* XI(3) 1999:599-646.

Includes bibliographical references.

Parmentier, Rémi. Greenpeace and the dumping of waste at sea: a case of non-state actors' intervention in international affairs. *International negotiation: a journal of theory and practice* 4(3) 1999:433-455.
Includes bibliographical references.

Pontecorvo, Concetta Maria. Interdependence between global environmental regimes: the Kyoto Protocol on climate change and forest protection. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 59(3) 1999:709-748.
Includes bibliographical references.

Pring, George (Rock), James Otto and Koh Naito. Trends in international environmental law affecting the minerals industry (part I). *Journal of energy and natural resources law* 17 (1) February 1999:39-55.
Includes bibliographical references.

_____. Trends in international environmental law affecting the minerals industry (part II). *Journal of energy and natural resources law* 17(2) May 1999:151-177.
Includes bibliographical references.

Protocol on liability and compensation for damage resulting from the transboundary movements of hazardous wastes and their disposal. *Colorado journal of international environmental law and policy: yearbook*, 1999:253-261.
Includes bibliographical references.

Provost, René. International criminal environmental law. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 439-453.
Includes bibliographical references.

Rangreji, Luther M. From Berlin to Kyoto: a gaseous mix of missed opportunities—a developing country agenda. *Indian journal of international law* 39(2) April-June 1999:277-290.
Includes bibliographical references.

Sand, Peter H. Carrots without sticks? New financial mechanisms for global environmental agreements. *Max Planck yearbook of United Nations law*, vol. 3 (1999):363-388.
Includes bibliographical references.

Sands, Philippe. International courts and the application of the concept of "sustainable development". *Max Planck yearbook of United Nations law*, vol. 3 (1999):389-405.
Includes bibliographical references.

Shapiro, William J. Protocol to abate acidification, eutrophication, and ground-level ozone. *Colorado journal of international environmental law and policy: yearbook*, 1999:208-219.
Includes bibliographical references.

Spectar, J. M. Saving the ice princess: NGOs, Antarctica and international law in the new millennium. *Suffolk transnational law review* 23(1) winter 1999:57-100.

Tarasofsky, Richard G. Ensuring compatibility between multilateral environmental agreements and the GATT/WTO. *Yearbook of international environmental law*, vol. 7 (1996): 52-74.
Includes bibliographical references.

Werksman, Jacob. Compliance and the Kyoto Protocol: building a backbone into a "flexible" regime. *Yearbook of international environmental law*, vol. 9 (1998):48-101.
Includes bibliographical references.

Wiser, Glenn M. The clean development mechanism versus the World Trade Organization: can free-market greenhouse gas emissions abatement survive free trade? *Georgetown international environmental law review* XI(3) 1999:531-597.
Includes bibliographical references.

Wolfrum, R. Means of ensuring compliance with and enforcement of international environmental law. *Recueil des cours (Hague Academy of International Law)*, vol. 272 (1998):9-154.
Includes bibliographical references.

Yokota, Yozo. International justice and the global environment. *Journal of international affairs* 52(2) spring 1999:583-598.
Includes bibliographical references.

Yoshida, O. Soft enforcement of treaties: the Montreal Protocol's non-compliance procedures and the functions of internal international institutions. *Colorado journal of international environmental law and policy* 10(1) winter 1999:95-141.
Includes bibliographical references.

Zahedi, Nancy S. Implementing the Rotterdam Convention: the challenges of transforming aspirational goals into effective controls on hazardous pesticide exports to developing countries. *Georgetown international environmental law review* XI(3) 1999:707-739.
Includes bibliographical references.

Financing

Williams, Stacy. Billion dollar donation: should the United Nations look a gift horse in the mouth? *Georgia journal of international and comparative law* 27(2) 1999:425-455.
Includes bibliographical references.

Human rights

Alkalaj, Sven. Never again? *Fordham international law journal* 23(2) December 1999:357-363.
Includes bibliographical references.

Anaya, S. James. Indigenous peoples and their demands within the modern human rights movement. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 149-161.
Includes bibliographical references.

_____. Superpower attitudes toward indigenous peoples and group rights. *Proceedings (American Society of International Law, Meeting).* 93rd (1999):251-260.
Includes bibliographical references.

André, Laurence, and Julie Dutry. La responsabilité internationale des Etats dans les situations d'extrême pauvreté. *Revue belge de droit international* XXXII(1) 1999:58-85.
Includes bibliographical references.

Arambulo, Kitty. *Strengthening the supervision of the International Covenant on Economic, Social and Cultural Rights: theoretical and procedural aspects* (Antwerp: Intersentia, 1999). xvii, 449 p.
Includes bibliographical references.

Babor, Diana D. M. Population growth and reproductive rights in international human rights law. *Connecticut journal of international law* 14(1) summer 1999:83-121.
Includes bibliographical references.

Baehr, Peter R. *Human rights: universality in practice* (London: MacMillan, 1999). viii, 178 p.

Baggett, Ted. Human rights abuses in Yugoslavia: to bring an end to political oppression, the international community should assist in establishing an independent Kosovo. *Georgia journal of international and comparative law* 27(2) 1999:457-476.
Includes bibliographical references.

Battistella, Graziano. Protection of the rights of migrants. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 185-199.
Includes bibliographical references.

Baylis, Elena A. General comment 24: confronting the problem of reservations to human rights treaties. *Berkeley journal of international law* 17(2) 1999:277-329.

Beyani, Chaloka. The legal premises for the international protection of human rights. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 21-35.
Includes bibliographical references.

Boerefijn, Ineke. *The reporting procedure under the Covenant on civil and political rights: practice and procedures of the Human Rights Committee* (Antwerp: Intersentia: Hart, 1999). xvi, 417 p.
Thesis (doctoral), Utrecht University, 1999. Includes bibliographical references and index. Bibliography: p. 393-398.

Boulesbaa, Ahcene. *The U.N. Convention on torture and the prospects for enforcement* (Boston, Mass.; London: M. Nijhoff Publishers, 1999). xvii, 366 p.
Includes bibliographical references and index.

The changing face of conflict and the efficacy of international humanitarian law. Edited by Helen Durham and Timothy L. H. McCormack (The Hague; Boston, Mass.: M. Nijhoff Publishers, 1999). xxvi, 225 p.
Includes bibliographical references and index.

Chevigny, Paul, Louis Sohn, Georges Abi-Saab and Theodor Meron. Ideal to law to practice: the Universal Declaration today and tomorrow. *Pace international law review* XI(1) spring 1999:69-87.
Includes bibliographical references.

Clapham, Andrew. Peace, the Security Council and human rights. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 375-388.
Includes bibliographical references.

Cox, Katherine. The inevitability of nimble fingers? Law, development, and child labor. *Vanderbilt journal of transnational law* 32(1) January 1999:115-165.
Includes bibliographical references.

Defeis, Elizabeth F. Minority protections and bilateral agreements: an effective mechanism. *Hastings international and comparative law review* 22(2) winter 1999:291-321.
Includes bibliographical references.

Detrick, Sharon. *A commentary on the United Nations Convention on the Rights of the Child* (The Hague; Boston, Mass.: M. Nijhoff Publishers, 1999). xlv, 790 p.
Bibliography: p. 759-772. Includes index.

"A 50th anniversary celebration of the Universal Declaration of Human Rights 1948-1998". *Pace international law review* XI(1) spring 1999:1-308.
Special issue. Includes bibliographical references.

Gemalmaz, Mehmet Semih. Constitution, ombudsperson and human rights chamber in "Bosnia and Herzegovina". *Netherlands quarterly of human rights* 17(3) September 1999: 277-329.
Includes bibliographical references.

"Genocide, war crimes, and crimes against humanity". *Fordham international law journal* 23(2) December 1999:275-488.
Series of articles dedicated to the United Nations High Commissioner for Human Rights. Includes bibliographical references.

Ghandhi, P. R. The Universal Declaration of Human Rights at fifty years: its origins, significance and impact. *German yearbook of international law*, vol. 41 (1998):206-251.
Includes bibliographical references.

Grammatikas, Vassilios. The definition of minorities in international law: a problem still looking for a solution. *Revue hellénique de droit international*, 52ème année (2) 1999:321-364.
Includes bibliographical references.

Hannum, Hurst. New minority rights for the twenty-first century. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 163-173.
Includes bibliographical references.

Innovation and inspiration: fifty years of the Universal Declaration of Human Rights. Edited by Peter Baehr, Cees Flinterman and Mignon Senders (Amsterdam: Royal Netherlands Academy of Arts and Sciences, 1999). viii, 238 p.
Includes bibliographical references and index.

Jacobs, Nicolas. La portée juridique des droits économiques sociaux et culturels. *Revue belge de droit international* XXXII(1) 1999:19-45.
Includes bibliographical references.

James, Mel. The country mechanisms of the United Nations Commission on Human Rights. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 75-84.
Includes bibliographical references.

Klein, Eckart. The universal protection of human rights—reality or Utopia? *Law and state*, vol. 59/60 (1999):61-77.
Bibliography: p. 75-77.

Lambert, Hélène. Protection against *refoulement* in Europe: human rights comes to the rescue. *International and comparative law quarterly* 48(3) July 1999:515-544.
Includes bibliographical references.

Martin, Ian. Closer to the victim: United Nations human rights field operations. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 85-97.
Includes bibliographical references.

McCorquodale, Robert. Secrets and lies: economic globalisation and women's human rights. *Australian year book of international law*, vol. 19 (1998):73-83.
Includes bibliographical references.

Melup, Irene. The United Nations declaration of basic principles of justice for victims of crime and abuse of power. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 53-65.
Includes bibliographical references.

Minow, Martha. The work of re-membering: after genocide and mass atrocity. *Fordham international law journal* 23(2) December 1999:429-439.
Includes bibliographical references.

Morsink, Johannes. *The Universal Declaration of Human Rights: origins, drafting and intent* (Philadelphia: University of Pennsylvania Press, 1999). xiv, 378 p.

Includes bibliographical references.

Mubiala, Mutoy. Les mécanismes des droits de l'homme des Nations Unies et la condition du réfugié, avec une attention spéciale à l'Afrique. *African journal of international and comparative law* 11(4) December 1999:671-687.

Includes bibliographical references.

Ndiaye, Bacre Waly. Thematic mechanisms and the protection of human rights. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 67-74.

Oraá, Jaime. The protection of human rights in emergency situations under customary international law. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 413-437.

Includes bibliographical references.

Pentassuglia, Gaetano. Minority protection in international law: from standard-setting to implementation. *Nordic journal of international law* 68(2) 1999:131-160.

Includes bibliographical references.

Pinto, Mónica. Fragmentation or unification among international institutions: human rights tribunals. *New York University journal of international law and politics* 31(4) summer 1999:833-842.

Includes bibliographical references.

The power of human rights: international norms and domestic change. Edited by Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (Cambridge, England; New York: Cambridge University Press, 1999). xii, 318 p.

Bibliography: p. 279-310. Includes index.

Ramcharan, B. G. A victim's perspective on the International human rights treaty regime. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 27-35.

Includes bibliographical references.

Rodley, Nigel S. The treatment of prisoners under international law. 2nd ed. (Oxford: Clarendon Press, 1999). xxix, 479 p.

Includes bibliographical references and index.

Santos Pais, Marta. A vision for children: the Convention on the Rights of the Child. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 131-143.

Includes bibliographical references.

Shelton, Dinah. *Remedies in international human rights law* (Oxford; New York: Oxford University Press, 1999). xli, 387 p.

Bibliography: p. 363-379.Includes index.

Sinha, Manoj Kumar. International human rights regime and states of emergency: need for reform. *Indian journal of international law* 39(4) October-December 1999:677-688.

Sloss, David. The domestication of international human rights: non-self-executing declarations and human rights treaties. *Yale journal of international law* 24(1) winter 1999:129-221.

Includes bibliographical references. Concerns the United States.

Slye, Ronald C. Apartheid as a crime against humanity: a submission to the South African Truth and Reconciliation Commission. *Michigan journal of international law* 20(2) winter 1999:267-300.
Includes bibliographical references.

"Symposium: The Universal Declaration of Human Rights at 50 and the challenge of global markets". *Brooklyn journal of international law* XXV(l) 1999:1-182.
Series of articles. Includes bibliographical references.

Telesetsky, Anastasia. The Kyoto Protocol. *Ecology law quarterly* 26(4) 1999:797-813.
Includes bibliographical references.

United Nations sanctions: effectiveness and effects, especially in the field of human rights: a multi-disciplinary approach. Edited by Willem J. M. van Genugten and Gerard A. de Groot (Antwerp: Intersentia, 1999). xiv, 161 p.
Revised papers from a conference held at Tilburg University, the Netherlands, on 27 and 28 November 1997. Includes bibliographical references (p. 153-161).

The Universal Declaration of Human Rights: a common standard of achievement. Edited by Gudmundur Alfredsson and Asbjorn Eide (The Hague; Boston, Mass.: Martinus Nijhoff Publishers/Cambridge, Mass.: Kluwer Law International, 1999). xxxv, 782 p.
Includes bibliographical references.

The Universal Declaration of Human Rights: fifty years and beyond. Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). xxii, 465 p.
Includes bibliographical references and index.

van Boven, Theo. The perspective of the victim. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 13-26.
Includes bibliographical references.

Van Bueren, Geraldine. *The international law on the rights of the child* (The Hague; Boston, Mass.: M. Nijhoff, 1998). xxiii, 435 p.
Includes bibliographical references and index.

Van der Vyver, Johan D. Prosecution and punishment of the crime of genocide. *Fordham international law journal* 23(2) December 1999:286-356.
Includes bibliographical references.

Van Tuijl, Peter. NGOs and human rights: sources of justice and democracy. *Journal of international affairs* 52(2) spring 1999:493-512.
Includes bibliographical references.

van Zyl, Paul. Dilemmas of transitional justice: the case of South Africa's Truth and Reconciliation Commission. *Journal of international affairs* 52(2) spring 1999:647-667.
Includes bibliographical references.

Weisburd, A. M. Implications of international relations theory for the international law of human rights. *Columbia journal of transnational law* 38(1) 1999:45-112.
Includes bibliographical references.

Wolfrum, Rüdiger. The protection of indigenous peoples in international law. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 59(2) 1999:369-382.
Includes bibliographical references.

_____. The Committee on the Elimination of Racial Discrimination. *Max Planck yearbook of United Nations law*, vol. 3 (1999):489-519.
Includes bibliographical references.

International criminal law

Abi-Saab, Georges. International criminal tribunals and the development of international humanitarian and human rights law. In: *Liber Amicorum Judge Mohammed Bedjaoui.* Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 649-658.
Includes bibliographical references.

Ahlbrecht, Heiko. Geschichte der völkerrechtlichen Strafgerichtsbarkeit im 20. Jahrhundert: unter besonderer Berücksichtigung der völkerrechtlichen Straftatbestände und der Bemühungen um einen Ständigen Internationalen Strafgerichtshof (Baden-Baden: Nomos, 1999). xxiv, 502 p.
Some material in English. Bibliography: p. 474-502.

Annotated leading cases of international criminal tribunals. Edited by André Klip and Göran Sluiter. vol. 1, *the International Criminal Tribunal for the former Yugoslavia 1993-1998* (Antwerp: Intersentia, 1999). 720 p.
Includes bibliographical references and index.

Arbour, Louise, and Morten Bergsmo. Conspicuous absence of jurisdictional overreach. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos.* Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 129-140.
Includes bibliographical references.

Arsanjani, Mahnoush H. Reflections on the jurisdiction and trigger-mechanism of the International Criminal Court. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos.* Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 57-76.
Includes bibliographical references.

_____. The Rome Statute of the International Criminal Court. *American journal of international law* 93(1) January 1999:22-43.
Includes bibliographical references.

Askin, Kelly D. Sexual violence in decisions and indictments of the Yugoslav and Rwandan tribunals: current status. *American journal of international law* 93(1) January 1999:97-123.
Includes bibliographical references.

Bank, Roland. Der Fall *Pinochet*: Aufbruch zu neuen Ufern bei der Verfolgung von Menschenrechtsverletzungen? *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 59(3) 1999:677-705.
Summary in English. Includes bibliographical references.

Barboza, J. International Criminal law. *Recueil des cours* (Hague Academy of International Law), vol. 278 (1999):9-199.
Includes bibliographical references.

Barrett, Matthew A. Ratify or reject: examining the United States' opposition to the International Criminal Court. *Georgia journal of international and comparative law* 28(1) 1999:83-110.
Includes bibliographical references.

Bassiouni, M. Cherif. *Crimes against humanity in international criminal law.* 2nd rev. ed. (The Hague; Boston, Mass.: Kluwer Law International, 1999). xli, 610 p.
Includes bibliographical references and index.

_____. The future of international criminal justice. *Pace international law review* XI(2) fall 1999:309-318.

_____. The International Criminal Court in historical context. *Saint Louis-Warsaw Transatlantic Law Journal* 1999:55-67.
Includes bibliographical references.

_____. *International criminal law*. 2nd ed. Edited by M. Cherif Bassiouni (Ardsley, N.Y.: Transnational Publishers, 1999). 3 v.
Includes bibliographical references and indexes. Contents: v. 1. Crimes—v. 2. Procedural and enforcement mechanisms—v. 3. Enforcement.

_____. Negotiating the Treaty of Rome on the establishment of an international criminal court. *Cornell international law journal* 32(3) 1999:443-469.
Includes bibliographical references.

_____. Policy perspectives favoring the establishment of the International Criminal Court. *Journal of international affairs* 52(2) spring 1999:795-810.
Includes bibliographical references.

Berman, Sir Franklin. The relationship between the International Criminal Court and the Security Council. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos*. Edited by Herman A.M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T.M.C. Asser Press, 1999). p. 173-180.

Bos, Adriaan. The International Criminal Court: recent developments. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos*. Edited by Herman A.M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T.M.C. Asser Press, 1999). p. 39-46.
Includes bibliographical references.

Brown, Bartram S. U.S. objections to the Statute of the International Criminal Court: a brief response. *New York University journal of international law and politics* 31(4) summer 1999:855-891.
Includes bibliographical references.

Cassel, Douglass. The ICC's new legal landscape: the need to expand U.S. domestic jurisdiction to prosecute genocide, war crimes, and crimes against humanity. *Fordham international law journal* 23(2) December 1999:378-397.
Includes bibliographical references.

Cassese, Antonio. The Statute of the International Criminal Court: some preliminary reflections. *European journal of international law* 10(1) 1999:144-171.
Includes bibliographical references.

Cervasio, Christine E. Extradition and the International Criminal Court: the future of the political offense doctrine. *Pace international law review* XI(2) fall 1999:419-446.
Includes bibliographical references.

Charney, Jonathan I. The impact on the international legal system of the growth of international courts and tribunals. *New York University journal of international law and politics* 31(4) summer 1999:697-708.
Includes bibliographical references.

_____. Progress in international criminal law? *American journal of international law* 93(2) April 1999:452-464.
Includes bibliographical references.

Ching, Ann B. Evolution of the command responsibility doctrine in light of the *Celebici* Decision of the International Criminal Tribunal for the Former Yugoslavia. *North Carolina journal of international law and commercial regulation* 25(1) fall 1999:167-205.
Includes bibliographical references.

Clark, Roger S., and David Tolbert. Toward an international criminal court. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 99-112.
Includes bibliographical references.

Condorelli, Luigi. La Cour pénale internationale: un pas de géant (pourvu qu'il soit accompli . . .). *Revue générale de droit international public* 103(1) 1999:7-21.
Includes bibliographical references.

Corell, Hans. The relationship between the International Criminal Court and the host country. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos.* Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 181-188.

David, Marcella. Grotius repudiated: the American objections to the International Criminal Court and the commitment to international law. *Michigan journal of international law* 20(2) winter 1999:337-412.
Includes bibliographical references.

Dicker, Richard. Issues facing the International Criminal Court's Preparatory Commission. *Cornell international law journal* 32(3) 1999:471-475.
Includes bibliographical references.

Ellis, Mark S. Bringing justice to an embattled region—creating and implementing the "rules of the road" for Bosnia-Herzegovina. *Berkeley journal of international law* 17(1) 1999: 1-25.
Includes bibliographical references.

Essays on the Rome Statute of the International Criminal Court. Vol. I. Edited by Flavia Lattanzi and William A. Schabas (Rome: II Sirente, 1999).
Includes Rome Statute of the International Criminal Court. Includes bibliographical references.

Fenrick, William J. Should crimes against humanity replace war crimes? *Columbia journal of transnational law* 37(3) 1999:767-785.
Includes bibliographical references.

Ferencz, Benjamin. A prosecutor's personal account: from Nuremberg to Rome. *Journal of international affairs* 52(2) spring 1999:455-469.
Includes bibliographical references.

Furuya, Shuichi. Rule 61 Procedure in the International Criminal Tribunal for the Former Yugoslavia: a lesson for the ICC. *Leiden journal of international law* 12(3) 1999:635-669.
Includes bibliographical references.

The future of the International Criminal Court. *Proceedings (American Society of International Law, Meeting).* 93rd (1999):65-72.
Includes bibliographical references.

Gaeta, Paola. The defence of superior orders: the Statute of the International Criminal Court *versus* customary international law. *European journal of international law* 10(1) 1999: 172-191.
Includes bibliographical references.

Hafher, Gerhard, Kristen Boon, Anne Rübesame and Jonathan Huston. A response to the American view as presented by Ruth Wedgwood. *European journal of international law* 10 (1) 1999:108-123.
Includes bibliographical references.

Henquet, Thomas. Mandatory compliance powers *vis-à-vis* states by the *ad hoc* tribunals and the International Criminal Court: a comparative analysis. *Leiden journal of international law* 12(4) 1999:969-999.

Includes bibliographical references.

Higgins, Rosalyn. The relationship between the International Criminal Court and the International Court of Justice. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos*. Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 163-172.

Includes bibliographical references.

Hoffmeister, Frank, and Sebastian Knoke. Das Vorermittlungsverfahren vor dem Internationalen Strafgerichtshof: Prüfstein für die Effektivität der neuen Gerichtsbarkeit im Völkerstrafrecht. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 59(3) 1999: 785-807.

Summary in English. Includes bibliographical references.

The International Criminal Court: the making of the Rome Statute: issues, negotiations, results. Edited by Roy S. Lee (The Hague; Boston, Mass.: Kluwer Law International, 1999). xxv, 657 p.

Includes bibliographical references and index.

The International Criminal Court and trial *in absentia*. *Brooklyn journal of international law* XXIV(3) 1999:763-796.

Includes bibliographical references.

"International criminal law in the 21st century". *Pace international law review* XI(2) fall 1999: 309-486.

Special issue. Includes bibliographical references.

Jia, Bing Bing. The differing concepts of war crimes and crimes against humanity in international criminal law. In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 243-271.

Includes bibliographical references.

Judicial reports—Recueils judiciaires, 1994-1995 (The Hague; Boston, Mass.: Kluwer Law International, 1999). 2 v.

Includes index.

Karagiannakis, Magdalini. The definition of rape and its characterization as an act of genocide —a review of the jurisprudence of the International Criminal Tribunals for Rwanda and the Former Yugoslavia. *Leiden journal of international law* 12(2) 1999:479-490.

Includes bibliographical references.

Kastrup, Dieter. From Nuremberg to Rome and beyond: the fight against genocide, war crimes, and crimes against humanity. *Fordham international law journal* 23(2) December 1999: 404-414.

Includes bibliographical references.

Kaul, Hans-Peter. Breakthrough in Rome: the Statute of the International Criminal Court. *Law and state* 59/60 1999:114-128.

Bibliography: p. 128.

Kirsch, Philippe, and John T. Holmes. The birth of the International Criminal Court: the 1998 Rome Conference. *Canadian yearbook of international law*, vol. XXXVI (1998):3-39.

Includes bibliographical references.

_____. The Rome Conference on an International Criminal Court: the negotiating process. *American journal of international law* 93(1) January 1999:2-12.
Includes bibliographical references.

La Haye, E. The jurisdiction of the International Criminal Court: controversies over the preconditions for exercising its jurisdiction. *Netherlands international law review* XLVI(l) 1999:1-25.
Includes bibliographical references.

Lattanzi, Flavia. Competence de la Cour pénale internationale et consentement des Etats. *Revue générale de droit international public* 103(2) 1999:425-444.
Includes bibliographical references.

Laviolette, Nicole. Commanding rape: sexual violence, command responsibility, and the prosecution of superiors by the International Criminal Tribunals for the Former Yugoslavia and Rwanda. *Canadian yearbook of international law*, vol. XXXVI (1998):93-149.
Includes bibliographical references.

Lee, Roy S. Creating an International Criminal Court—of procedures and compromises. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos*. Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 141-152.

Levy Rodriguez, Cara. Slaying the monster: why the United States should not support the Rome Treaty. *American University international law review* 14(3) 1999:805-844.
Includes bibliographical references.

Lietzau, William K. Checks and balances and elements of proof: structural pillars for the International Criminal Court. *Cornell international law journal* 32(3) 1999:477-488.
Includes bibliographical references.

Linton, Suzannah. Reviewing the Case of Dra en Erdemovi: unchartered waters at the International Criminal Tribunal for the Former Yugoslavia. *Leiden journal of international law* 12(1) 1999:251-270.
Includes bibliographical references.

López-Hurtado, Carlos. The rights of the defence in the law and practice of the international criminal tribunals. *The Review/International Commission of Jurists*, No. 61 (1999):83-108.
Includes bibliographical references.

Maison, Rafaëlle. Le crime de génocide dans les premiers jugements du Tribunal international pour le Rwanda. *Revue générale de droit international public* 103(1) 1999:129-145.
Includes bibliographical references.

Marks, Stephen P. Elusive justice for the victims of the Khmer Rouge. *Journal of international affairs* 52(2) spring 1999:691-718.
Includes bibliographical references.

May, Richard. The relationship between the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos*. Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 155-162.

May, Richard, and Marieke Wierda. Trends in international criminal evidence: Nuremberg, Tokyo, The Hague, and Arusha. *Columbia journal of transnational law* 37(3) 1999:725-765.
Includes bibliographical references.

Meron, Theodor. Crimes under the jurisdiction of the International Criminal Court. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos*. Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 47-55.

Moreno Ocampo, Luis. Beyond punishment: justice in the wake of massive crimes in Argentina. *Journal of international affairs* 52(2) spring 1999:669-689.
Includes bibliographical references.

Murphy, Sean D. Progress and jurisprudence of the International Criminal Tribunal for the Former Yugoslavia. *American journal of international law* 93(1) January 1999:57-97.
Includes bibliographical references.

Niang, Mame Mandiaye. Le Tribunal pénal international pour le Rwanda. Et si la contumace était possible! *Revue générale de droit international public* 103(2) 1999:379-403.
Summaries in French and English. Includes bibliographical references.

Oosthuizen, G. H. Some preliminary remarks on the relationship between the envisaged International Criminal Court and the UN Security Council. *Netherlands international law review* XLVI(3) 1999:313-342.
Includes bibliographical references.

Orentlicher, Diane F. Politics by other means: the law of the International Criminal Court. *Cornell international law journal* 32(3) 1999:489-497.
Includes bibliographical references.

O'Shea, Andreas. The Statute of the International Criminal Court. *South African law journal* 116 (II) 1999:243-261.
Includes bibliographical references.

Patel, Bimal N. Do the rules of evidence and procedure of the International Criminal Tribunal for ex-Yugoslavia ensure a fair trial? *Indian journal of international law* 39(3) July-September 1999:464-469.
Includes bibliographical references.

Penrose, Mary Margaret. Lest we fail: the importance of enforcement in international criminal law. *American University international law review* 15(2) 1999:321-394.
Includes bibliographical references.

Politi, Mauro. Le statut de Rome de la Cour pénale internationale: le point de vue d'un négociateur. *Revue générale de droit international public* 103(4) 1999:817-850.
Summaries in French and English. Includes bibliographical references.

Reflections on the International Criminal Court: essays in honor of Adriaan Bos. Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). xvii, 211 p.
Includes bibliographical references.

Robertson, Geoffrey. *Crimes against humanity: the struggle for global justice* (London: Allen Lane, 1999). xx, 472 p.
Includes index.

Robinson, Darryl. Defining "crimes against humanity" at the Rome Conference. *American journal of international law* 93(1) January 1999:43-57.
Includes bibliographical references.

Rubin, Alfred P. Challenging the conventional wisdom: another view of the International Criminal Court. *Journal of international affairs* 52(2) spring 1999:783-794.
Includes bibliographical references.

_____. A critical view of the proposed international criminal court. *The Fletcher forum of world affairs* 23(2) fall 1999:139-150.
Includes bibliographical references.

Ryan, Samantha I. From the furies of Nanking to the eumenides of the International Criminal Court: the evolution of sexual assaults as international crimes. *Pace international law review* XI(2) fall 1999:447-486.

Includes bibliographical references.

Rydberg, Åsa. The protection of the interests of witnesses—the ICTY in comparison to the future ICC. *Leiden journal of international law* 12(2) 1999:455-478.

Includes bibliographical references.

Sarooshi, Danesh. The Statute of the International Criminal Court. *International and comparative law quarterly* 48(2) April 1999:387-404.

Scharf, Michael P. The amnesty exception to the jurisdiction of the International Criminal Court. *Cornell international law journal* 32(3) 1999:507-527.

Includes bibliographical references.

_____. Responding to Rwanda: accountability mechanisms in the aftermath of genocide. *Journal of international affairs* 52(2) spring 1999:621-638.

Includes bibliographical references.

Scheffer, David J. Deterrence of war crimes in the 21st century. *Maryland journal of international law and trade* 23(1) spring/summer 1999:1-13.

Includes bibliographical references.

_____. The United States and the International Criminal Court. *American journal of international law* 93(1) January 1999:12-22.

Includes bibliographical references.

_____. U.S. policy and the International Criminal Court. *Cornell international law journal* 32(3) 1999:529-534.

Includes bibliographical references.

_____. War crimes and crimes against humanity. *Pace international law review* XI(2) fall 1999:319-340.

Includes bibliographical references.

Sharp, Sr., Walter Gary. The International Criminal Tribunal for the Former Yugoslavia: defining the offenses. *Maryland journal of international law and trade* 23(1) spring/summer 1999:15-76.

Includes bibliographical references.

Šimonović, Ivan. The role of the ICTY in the development of international criminal adjudication. *Fordham international law journal* 23(2) December 1999:440-459.

Includes bibliographical references.

Strijards, Gerard. The institution of an International Criminal Court. *Leiden journal of international law* 12(3) 1999:671-681.

Includes bibliographical references.

Sur, Serge. Vers une Cour pénale internationale: la Convention de Rome entre les O.N.G. et le Conseil de Sécurité. *Revue générale de droit international public* 103(1) 1999:29-45.

Swart, Bert, and Göran Sluiter. The International Criminal Court and international criminal cooperation. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos*. Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T.M.C. Asser Press, 1999). p. 91-127.

Includes bibliographical references.

"Symposium—The International Criminal Court: consensus and debate on the international adjudication of genocide, crimes against humanity, war crimes, and aggression". *Cornell international law journal* 32(3) 1999:437-541.

Special issue. Includes bibliographical references.

"Symposium: The International Criminal Court". *European journal of international law* 10(1) 1999:93-191.

Series of articles. Includes bibliographical references.

"Symposium issue—The proliferation of international tribunals: piecing together the puzzle". *New York University journal of international law and politics* 31(4) summer 1999:679-933.

Special issue. Includes bibliographical references.

Tallgren, Immi. We did it? The vertigo of law and everyday life at the Diplomatic Conference on the establishment of an International Criminal Court. *Leiden journal of international law* 12(3) 1999:683-707.

Includes bibliographical references.

Thornton, Brenda Sue. An International Criminal Tribunal for Rwanda: a report from the field. *Journal of international affairs* 52(2) spring 1999:639-646.

Includes bibliographical references.

Tochilovsky, V. Rules of procedure for the International Criminal Court: problems to address in light of the experience of the ad hoc tribunals. *Netherlands international law review* XVLI(3) 1999:343-360.

Includes bibliographical references.

Toward an International Criminal Court: three options presented as presidential speeches (New York: Council on Foreign Relations, 1999). viii, 94 p.

van Boven, Theo. The position of the victim in the Statute of the International Criminal Court. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos.* Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 77-89.

Includes bibliographical references.

van der Vyver, J. D. Universal jurisdiction in international criminal law. *South African yearbook of international law*, vol. 24 (1999):107-132.

Includes bibliographical references.

Van Schaack, Beth. The definition of crimes against humanity: resolving the incoherence. *Columbia journal of transnational law* 37(3) 1999:787-850.

Includes bibliographical references.

_____. The establishment of the Permanent International Criminal Court: an international symposium. *Chinese yearbook of international law and affairs*, vol. 17 (1998-1999): 1-61.

Includes bibliographical references.

Von Hebel, Herman. An international criminal court—a historical perspective. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos.* Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 13-38.

Includes bibliographical references.

Washburn, John. The negotiation of the Rome Statute for the International Criminal Court and international lawmaking in the 21st century. *Pace international law review* XI(2) fall 1999:361-377.

Includes bibliographical references.

Wedgwood, Ruth. The International Criminal Court: an American view. *European journal of international law* 10(1) 1999:93-107.
Includes bibliographical references.

_____. The United States and the International Criminal Court: achieving a wider consensus through the "Ithaca Package". *Cornell international law journal* 32(3) 1999:535-541.
Includes bibliographical references.

Wippman, David. Atrocities, deterrence, and the limits of international justice. *Fordham international law journal* 23(2) December 1999:473-488.
Includes bibliographical references.

Wladimiroff, Michaïl. The assignment of defence counsel before the International Criminal Tribunal for Rwanda. *Leiden journal of international law* 12(4) 1999:957-968.
Includes bibliographical references.

Wortzel, Kerry R. The jurisdiction of an international criminal tribunal in Kosovo. *Pace international law review* XI(2) fall 1999:379-404.
Includes bibliographical references.

Zappalà, S. Il procuratore della Corte penale internazionale: luci e ombre. *Rivista di diritto internazionale* LXXXII(l) 1999:39-85.
Includes bibliographical references.

Zwanenburg, Marten. The statute for an international criminal court and the United States: peacekeepers under fire? *European journal of international law* 10(1) 1999:124-143.
Includes bibliographical references.

International economic law

Bello, Judith H. Rising tides: the many-faceted benefits of global trade liberalization. *Proceedings (American Society of International Law, Meeting)*. 93rd (1999):86-97.
Includes bibliographical references.

Convention pour l'unification de certaines règles relatives au transport aérien international, adoptée à Montréal le 28 mai 1999. *Revue française de droit aérien et spatial* 212(4) octobre-décembre 1999:381-400.

Cortright, David, and George A. Lopez. Are sanctions just? The problematic case of Iraq. *Journal of international affairs* 52(2) spring 1999:735-755.
Includes bibliographical references.

Didier, Nsasa Makamona. Système commercial multilatéral: 50 ans de libéralisation des échanges internationaux. *African journal of international and comparative law* 11(4) December 1999:709-723.
Includes bibliographical references.

Ezrahi, Ariel M. Opting out of opt-out clauses: removing obstacles to international trade and international peace. *Law and policy in international business* 31(1) 1999:123-156.
Includes bibliographical references.

Folliot, Michel G. La modernisation du système varsovien de responsabilité du transporteur. *Revue française de droit aérien et spatial* 212(4) octobre-décembre 1999:409-437.
Includes bibliographical references.

Gates, Sean. La Convention de Montréal de 1999. *Revue française de droit aérien et spatial* 212(4) octobre-decembre 1999:439-446.
Includes bibliographical references.

Jackson, John H. International economic law: jurisprudence and contours. *Proceedings (American Society of International Law, Meeting)*. 93rd (1999):98-104.
Includes bibliographical references.

Spar, Debora, and David Yoffie. Multinational enterprises and the prospects for justice. *Journal of international affairs* 52(2) spring 1999:557-581.
Includes bibliographical references.

Tarullo, Daniel K. Law and governance in a global economy. *Proceedings (American Society of International Law, Meeting)*. 93rd (1999):105-113.
Includes bibliographical references.

International terrorism

Dugard, John. Terrorism and international law. Consensus at last? In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 159-171.
Includes bibliographical references.

Hunt, Cecil. The potential contribution of the Chemical Weapons Convention to combating terrorism. *Michigan journal of international law* 20(3) spring 1999:523-535.
Includes bibliographical references.

Terrorism and international responses. *Proceedings (American Society of International Law, Meeting)*. 93rd (1999):78-81.
Includes bibliographical references.

International trade law

Bailey, James E. Facing the truth: seeing the Convention on contracts for the international sale of goods as an obstacle to a uniform law of international sales. *Cornell international law journal* 32(2) 1999:263-317.
Includes bibliographical references.

Bernasconi, C. The personal and territorial scope of the Vienna Convention on contracts for the international sale of goods (article 1). *Netherlands international law review* XLVI(2) 1999:137-170.
Includes bibliographical references.

Bhala, Raj. The myth about *stare decisis* and international trade law (Part one of a trilogy). *American University international law review* 14(4) 1999:845-956.
Includes bibliographical references.

Boele-Woelki, Katharina. The limitation of rights and actions in the international sale of goods. *Uniform law review* IV(3) 1999:621-650.
Summary in French. Includes bibliographical references.

De Ly, Filip. The U.N. Convention on independent guarantees and stand-by letters of credit. *The international lawyer* 33(3) fall 1999:831-847.
Includes bibliographical references.

Eiselen, Sieg. Adoption of the Vienna Convention for the International Sale of Goods (the CISG) in South Africa. *South African law journal* 116(II) 1999:323-370.
Includes bibliographical references.

"The Fifteenth Sokol Colloquium on private international law: unity and harmonization in international commercial law". *Virginia journal of international law* 39(3) spring 1999: 537-797.
Special issue. Includes bibliographical references.

Gillette, Clayton P. Harmony and stasis in trade usages for international sales. *Virginia journal of international law* 39(3) spring 1999:707-741.
Includes bibliographical references.

Hansen, Patricia I. Transparency, standards of review, and the use of trade measures to protect the global environment. *Virginia journal of international law* 39(4) 1999:1017-1068.
Includes bibliographical references.

Honnold, John O. *Uniform law for international sales under the 1980 United Nations Convention.* 3rd ed. (The Hague; Boston, Mass.: Kluwer Law International, 1999). xxix, 608 p.
Includes bibliographical references and index.

Kapstein, Ethan B. Distributing the gains: justice and international trade. *Journal of international affairs* 52(2) spring 1999:533-555.
Includes bibliographical references.

Managing failure in the new global economy: the U.N.C.I.T.R.A.L. model law on cross-border insolvency. *Boston College international and comparative law review* XXII(2) spring 1999:383-423.
Includes bibliographical references.

Walt, Steven. Novelty and the risks of uniform sales law. *Virginia journal of international law* 39(3) spring 1999:671-705.
Includes bibliographical references.

International waterways

Carroll, Christina M. Past and future legal framework of the Nile River Basin. *Georgetown international environmental law review* XII(l) 1999:269-304.
Includes bibliographical references.

Castillo Daudí, Mireya. La protección y preservación de cursos de agua internacionales: el Convenio sobre el derecho de los usos de los cursos de agua internacionales para fines distintos de la navegación de 21 de mayo de 1997. *Anuario de derecho internacional,* vol. XV (1999):115-158.
Includes bibliographical references.

Fuentes, Ximena. Sustainable development and the equitable utilization of international watercourses. *British year book of international law,* vol. 69 (1998):119-200.
Includes bibliographical references.

_____. The utilization of international groundwater in general international law. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 177-198.
Includes bibliographical references.

Kasme, Badr. L'obligation de règlement des différends relatifs aux cours d'eau internationaux. In: *Liber Amicorum Judge Mohammed Bedjaoui.* Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 179-200.
Includes bibliographical references.

Intervention

Abiew, Francis Kofi. *The evolution of the doctrine and practice of humanitarian intervention* (The Hague; Boston, Mass.: Kluwer Law International, 1999). 325 p.
Thesis (Doctoral), University of Alberta, 1997. Bibliography: p. 283-319. Includes index.

Barrie, George N. Forcible intervention and international law: legal theory and realities. *South African law journal* 116(IV) 1999:791-809.
Includes bibliographical references.

Blockmans, Steven. Moving into UNchartered waters: an emerging right of unilateral humanitarian intervention? *Leiden journal of international law* 12(4) 1999:759-786.
Includes bibliographical references.

Bothe, Michael, and Bernd Martenczuk. Die NATO und die Vereinten Nationen nach dem Kosovo-Konflikt: eine völkerrechtliche Standortbestimmung. *Vereinte Nationen* 47(4) August 1999:125-132.
Includes bibliographical references.

Charney, Jonathan I. Anticipatory humanitarian intervention in Kosovo. *Vanderbilt journal of transnational law* 32(5) November 1999:1231-1248.
Includes bibliographical references.

Cox, Marcus. The Dayton Agreement in Bosnia and Herzegovina: a study of implementation strategies. *British year book of international law*, vol. 69 (1998):201-243.
Includes bibliographical references.

Currie, John. NATO's humanitarian intervention in Kosovo: making or breaking international law? *Canadian yearbook of international law*, vol. XXXVI (1998):303-333.
Includes bibliographical references.

Guicherd, Catherine. International law and the war in Kosovo. *Survival: the IISS quarterly* 41(2) summer 1999:19-33.
Includes bibliographical references.

Kritsiotis, Dino. Security Council Resolution 1101 (1997) and the Multinational Protection Force of Operation Alba in Albania. *Leiden journal of international law* 12(3) 1999:511-547.
Includes bibliographical references.

Nolte, Georg. *Eingreifen auf Einladung: zur völkerrechtlichen Zulässigkeit des Einsatzes fremder Truppen im internen Konflikt auf Einladung der Regierung—Intervention upon invitation: use of force by foreign troops in internal conflicts at the invitation of a government under international law* (Berlin; New York: Springer, 1999). xxv, 1038 p.
Includes bibliographical references (p. 641-684) and index. Summary in English.

_____. Kosovo und Konstitutionalisierung: zur humanitären Intervention der NATO-Staaten. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 59(4) 1999: 941-960.
Summary in English. Includes bibliographical references.

Raj, Sushil. The failure of humanitarian intervention in Rwanda and the need for reconceptualisation. *Indian journal of international law* 39(3) July-September 1999:470-482.
Includes bibliographical references.

Weiss, Thomas George. *Military-civilian interactions: intervening in humanitarian crises* (Lanham, Md.: Rowman & Littlefield, 1999). xix, 281 p.
Includes bibliographical references (p. 257-267) and index.

Williams, John. The ethical basis of humanitarian intervention, the Securiy Council and Yugoslavia. *International peacekeeping* 6(2) summer 1999:1-23.
Includes bibliographical references.

Law of the sea

Bartson, Ronald. The law of the sea and regional fisheries organisations. *International journal of marine and coastal law* 14(3) August 1999:333-352.
Includes bibliographical references.

Boyle, A. E. Problems of compulsory jurisdiction and the settlement of disputes relating to straddling fish stocks. *International journal of marine and coastal law* 14(1) March 1999:1-25.
Includes bibliographical references.

Bula-Bula, Sayeman. L'odyssée du droit de la mer dans les abysses. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 63-141.
Includes bibliographical references.

Charney, Jonathan I. Rocks that cannot sustain human habitation. *American journal of international law* 93(4) October 1999:863-878.
Includes bibliographical references.

Churchill, R. R., and A. V. Lowe. *The law of the sea*. 3rd ed. (Manchester, England: Manchester University Press, 1999). xlix, 494 p.
Includes bibliographical references and index.

Churchill, Robin. Fisheries jurisdictions case (Spain v. Canada). *Leiden journal of international law* 12(3)1999:597-611.
Includes bibliographical references.

Dyoulgerov, Milen. Navigating the Bosporus and the Dardanelles: a test for the international community. *International journal of marine and coastal law* 14(1) March 1999:57-100.
Includes bibliographical references.

Evans, Malcolm D. Maritime delimitation after *Denmark v. Norway*: back to the future? In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 153-176.
Includes bibliographical references.

Franckx, Erik. Vessel-source pollution and coastal state jurisdiction: general framework. *South African yearbook of international law*, vol. 24 (1999):1-34.
Includes bibliographical references.

Freestone, David, and Zen Makuch. The new international environmental law of fisheries: the 1995 UN Straddling Stocks Convention. *Yearbook of international environmental law*, vol. 7 (1996):3-51.
Includes bibliographical references.

Hakapää, K., and E. J. Molenaar. Innocent passage—past and present. *Marine policy* 23(2) March 1999:131-145.
Includes bibliographical references.

Hulsewé, Daphne. In the tradition of Grotius: building an airport in the EEZ. *Annals of air and space law*, vol. XXIV (1999):63-82.
Includes bibliographical references.

Kaye, Stuart. The use of multiple boundaries in maritime boundary delimitation: law and practice. *Australian year book of international law*, vol. 19 (1998):49-72.
Includes bibliographical references.

Keyuan, Zou. The Chinese traditional maritime boundary line in the South China Sea and its legal consequences for the resolution of the dispute over the Spratly Islands. *International journal of marine and coastal law* 14(1) March 1999:27-55.
Includes bibliographical references.

Laing, E. A. A perspective on provisional measures under UNCLOS. *Netherlands yearbook of international law*, vol. XXIX (1998):45-70.
Includes bibliographical references.

Llanos Mansilla, Hugo. La aplicación del Derecho del Mar en la Antártica. *Revista Peruana de Derecho International* XLIX (113) enero-junio 1999:91-114.
Includes bibliographical references.

Marsit, Mohamed Mouldi. *Le tribunal du droit de la mer: présentation et textes officiels* (Paris: A. Pedone, 1999). 175 p.

Menefee, Samuel Pyeatt. Foreign naval intervention in cases of privacy: problems and strategies. *International journal of marine and coastal law* 14(3) August 1999:353-370.
Includes bibliographical references.

Oceans policy: new institutions, challenges and opportunities. Edited by Myron H. Nordquist and John Norton Moore (The Hague; Boston, Mass.: M. Nijhoff Publishers, 1999). xv, 344 p.
Includes bibliographical references.

Order for the oceans at the turn of the century. Edited by Davor Vidas and Willy Ostreng (The Hague; Boston, Mass.: Kluwer Law International, 1999). xxxiii, 577 p.
Includes bibliographical references and index.

Orrego Vicuña, Francisco. *The changing international law of high seas fisheries* (Cambridge, England; New York: Cambridge University Press, 1999). xix, 338 p.
Bibliography: p. 294-329. Includes index.

Regulation of the Turkish straits: UNCLOS as an alternative to the Treaty of Montreux and the 1994 Maritime Traffic Regulations for the Turkish Straits and Marmara Region. *Fordham international law journal* 22(3) March 1999:961-1001.
Includes bibliographical references.

Stephens, Dale G. The impact of the 1982 Law of the Sea Convention on the conduct of peacetime naval/military operations. *California Western international law journal* 29(2) spring 1999:283-311.
Includes bibliographical references.

Treves, Tullio. Conflicts between the International Tribunal for the Law of the Sea and the International Court of Justice. *New York University journal of international law and politics* 31(4) summer 1999:809-821.
Includes bibliographical references.

Vasciannie, Stephen. Resource entitlement in the law of the sea: some areas of continuity and change. In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 539-564.
Includes bibliographical references.

Wolfrum, Rudiger. The impact of the United Nations Convention on the Law of the Sea on the progressive development of international law. *Indian journal of international law* 39(4) October-December 1999:615-625.
Includes bibliographical references.

Wood, Michael C. International seabed authority: the first four years. *Max Planck yearbook of United Nations law*, vol. 3 (1999):173-241.
Includes bibliographical references.

Woodliffe, John. Decommissioning of offshore oil and gas installations in European waters: the end of a decade of indecision? *International journal of marine and coastal law* 14(1) March 1999:101-123.
Includes bibliographical references.

Zou, Keyuan. The Chinese traditional maritime boundary line in the South China Sea and its legal consequences for the resolution of the dispute over the Spratly Islands. *International journal of marine and coastal law* 14(1) March 1999:27-55.
Includes bibliographical references.

Law of treaties

Boyle, Alan E. Some reflections on the relationship of treaties and soft law. *International and comparative law quarterly* 48(4) October 1999:901-913.
Includes bibliographical references.

Carr, Craig L., and Gary L. Scott. Multilateral treaties and the environment: a case study in the formation of customary international law. *Denver journal of international law and policy* 27(2) spring 1999:313-335.
Includes bibliographical references.

Moore, John Norton. Enhancing compliance with international law: a neglected remedy. *Virginia journal of international law* 39(4) summer 1999:881-1016.
Includes bibliographical references.

Pratap, Ravindra. Nuclear arms control treaties and non-parties. *Indian journal of international law* 39(4) October-December 1999:626-676.
Includes bibliographical references.

Sapienza, Rosario. Les déclarations interprétatives unilatérales et l'interprétation des traités. *Revue générale de droit international public* 103(3) 1999:601-629.
Summaries in French, English and Spanish. Includes bibliographical references.

Suy, Eric. Le préambule. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 253-269.
Includes bibliographical references.

Law of war

Ashkin, Kelly D. The international war crimes trial of Anto Furundzija: major progress toward ending the cycle of impunity for rape crime. *Leiden journal of international law* 12(4) 1999:935-955.
Includes bibliographical references.

Cervell, José María. Las minas antipersonales: ¿el principio del fin? *Anuario de derecho internacional*, vol. XV (1999):481-503.
Includes bibliographical references.

Crimes of war: what the public should know. Edited by Roy Gutman and David Rieff (New York: W. W. Norton & Co, 1999). 399 p.
Includes bibliographical references.

David, Eric. Principes de droit des conflits armés. 2ème éd. (Bruxelles: Bruylant, 1999). 860 p.
Bibliography: p. 799-821. Includes index.

Djiena Wembou, Michel-Cyr. La répression des crimes de guerre et des autres violations graves du droit humanitaire. *African journal of international and comparative law* 11(3) October 1999:375-391.
Includes bibliographical references.

Draper, G. I. A. D. *Reflections on law and armed conflicts: the selected works on the laws of war by the late professor Colonel G. I. A. D. Draper, OBE*. Edited by Michael A. Meyer and Hilarie McCoubrey (The Hague; Boston, Mass.: Kluwer Law International, 1998). xxx, 288 p.
Includes bibliographical references and index.

"Essays on the laws of war and war crimes tribunals in honor of Telford Taylor". *Columbia journal of transnational law* 37 (3) 1999:649-1047.

Special issue. Includes bibliographical references. Bibliography: p. 1015-1047.

Lavoyer, Jean-Philippe and Louis Maresca. The role of the ICRC in the development of international humanitarian law. *International negotiation: a journal of theory and practice* 4(3) 1999:501-525.

Includes bibliographical references.

Mustoe, Jodi Preusser. The 1997 Treaty to ban the use of landmines: Was president Clinton's refusal to become a signatory warranted? *Georgia journal of international and comparative law* 27(3) 1999:541-569.

Includes bibliographical references.

Patel, Bimal N. Protection zones in international humanitarian law. *Indian journal of international law* 39(4) October-December 1999:689-702.

Includes bibliographical references.

The regulation of an invisible enemy: the international community's response to land mine proliferation. *Boston College international and comparative law review* XXII(2) spring 1999:465-493.

Includes bibliographical references.

Sapone, Montgomery. Have rifle with scope, will travel: the global economy of mercenary violence. *California Western international law journal* 30(1) fall 1999:1-43.

Includes bibliographical references.

Sassòli, Marco, and Antoine A. Bouvier. *How does law protect in war? Cases, documents, and teaching materials on contemporary practice in international humanitarian law* (Geneva: International Committee of the Red Cross, 1999). 1492 p.

Includes bibliographical references and index.

Maintenance of peace

Call, Chuck, and Michael Barnett. Looking for a few good cops: peacekeeping, peacebuilding and CIVPOL. *International peacekeeping* 6(4) winter 1999:43-68.

Includes bibliographical references.

Cellamare, Giovanni. Le operazioni di peace-keeping multifunzionali (Turin: G. Giappichelli, 1999). xvi, 239 p.

Includes bibliographical references and index.

Chandler, David. The limits of peacebuilding: international regulation and civil society development in Bosnia. *International peacekeeping* 6(1) spring 999:109-125.

Includes bibliographical references.

Cordone, Claudio. Police reform and human rights investigations: the experience of the UN Mission in Bosnia and Herzegovina. *International peacekeeping* 6(4) winter 1999:191-209.

Includes bibliographical references.

Eide, Espen Barth, and Tor Tanke Holm. Postscript: towards executive authority policing? The lessons of Kosovo. *International peacekeeping* 6(4) winter 1999:10-219.

Includes bibliographical references.

Griffin, Michèle. Retrenchment, reform and regionalization: trends in UN peace support operations. *International peacekeeping* 6(1) spring 1999:1-31.

Includes bibliographical references.

Hartz, Halvor. CIVPOL: the UN instrument for police reform. *International peacekeeping* 6(4) winter 1999:27-42.
Includes bibliographical references.

Holm, Tor Tanke. CIVPOL operations in Eastern Slavonia, 1992-1998. *International peacekeeping* 6(4) winter 1999:135-156.
Includes bibliographical references.

Malan, Mark. Peacebuilding in Southern Africa: police reform in Mozambique and South Africa. *International peacekeeping* 6(4) winter 1999:171-190.
Includes bibliographical references.

Marotta, Francesca. The blue flame and the gold shield: methodology, challenges and lessons learned on human rights training for police. *International peacekeeping* 6(4) winter 1999:69-92.
Includes bibliographical references.

Nachmias, Nitza. UNIFIL: When peace is non-existent, peacekeeping is impossible. *International peacekeeping* 6(3) autumn 1999:95-112.
Includes bibliographical references.

Otis, Pauletta, and Joseph C. Bebel. Borders and boundaries: drawing lines which keep the peace. *International peacekeeping* 6(3) autumn 1999:31-53.
Includes bibliographical references.

Peacebuilding and police reform. *International peacekeeping* 6(4) winter 1999:1-219.
Special issue. Includes bibliographical references.

Peacekeeping and the UN agencies. Edited by Jim Whitman (London; Portland, Or.: Frank Cass, 1999). 143 p.
Includes bibliographical references and index.

Perritt, Jr., Henry H. Policing international peace and security: international police forces. *Wisconsin international law journal* 17(2) summer 1999:281-324.
Includes bibliographical references.

Sinjela, Mpazi. The United Nations and internal/international conflicts in Africa: a documentary survey. *African yearbook of international law*, vol. 6 (1998):289-363.
Includes bibliographical references.

Urios Moliner, Santiago. La convención sobre seguridad del personal de las Naciones Unidas y el personal asociado. *Anuario de derecho internacional*, vol. XV (1999):547-599.
Includes bibliographical references.

Wundeh Eno, Robert. United Nations peacekeeping operations and respect for human rights. *South African yearbook of international law*, vol. 24 (1999):76-106.
Includes bibliographical references.

Membership and representation

Janev, Igor. Legal aspects of the use of a provisional name for Macedonia in the United Nations system. *American journal of international law* 93(1) January 1999:155-160.
Includes bibliographical references.

McDermott, Anthony. Japan's financial contribution to the UN System: in pursuit of acceptance and standing. *International peacekeeping* 6(2) summer 1999:64-88.
Includes bibliographical references.

Namibia

Bennett, Terence, and Christopher D. Rogers. How mineral policy regarding taxation is reflected in the mineral law of Namibia. *Journal of energy and natural resources law* 17(3) August 1999:236-250.

Includes bibliographical references.

Pomerance, Michla. The ICJ and South West Africa (Namibia): a retrospective legal political assessment. *Leiden journal of international law* 12(2) 1999:425-436.

Includes bibliographical references.

Narcotic drugs

Raustiala, Kal. Law, liberalization and international narcotics trafficking. *New York University journal of international law and politics* 32(1) fall 1999:89-145.

Includes bibliographical references.

Natural resources

Bacon, Brad L. Enforcement mechanisms in international wildlife agreement and the United States: wading through the murk. *Georgetown international environmental law review* XII(l) 1999:331-363.

Includes bibliographical references.

Beer-Gabel, Josette, and Bernard Labat. *La protection internationale de la faune et de la flore sauvages* (Bruxelles: Editions Bruylant; Editions de l'Université de Bruxelles, 1999). 266 p.

Includes index.

Manrique Daemisch, Ricardo V. El Protocolo de Madrid en el contexto del Sistema del Tratado Antártico. *Revista Peruana de Derecho International* XLIX(113) enero-junio 1999: 123-158.

Includes bibliographical references.

Mercure, Pierre-François. La proposition d'un modèle de gestion intégrée des ressources naturelles communes de l'humanité. *Canadian yearbook of international law*, vol. XXXVI (1998):41-92.

Includes bibliographical references.

Ong, David M. Joint development of common offshore oil and gas deposits: "Mere" state practice or customary international law? *American journal of international law* 93(4) October 1999:771-804.

Includes bibliographical references.

Non-governmental organizations

Abiew, Francis Kofi, and Tom Keating. NGO's and UN peacekeeping operations: strange bedfellows. *International peacekeeping* 6(2) summer 1999:89-111.

Includes bibliographical references.

Afsharipour, Afra. Empowering ourselves: the role of women's NGOs in the enforcement of the Women's Convention. *Columbia law review* 99(1) January 1999:129-172.

Includes bibliographical references.

Albin, Cecilia. Can NGOs enhance the effectiveness of international negotiation? *International negotiation: a journal of theory and practice* 4(3) 1999:371-387.

Includes bibliographical references.

Burroughs, John, and Jacqueline Cabasso. Confronting the nuclear-armed states in international negotiating forums: lessons for NGOs. *International negotiation: a journal of theory and practice* 4(3) 1999:457-480.

Includes bibliographical references.

Nelson, Nancy. International concern for the sustainability of the world's fisheries: United Nations efforts to combat over-fishing and international debate over state fishing subsidies. *Colorado journal of international environmental law and policy: yearbook*, 1999:157-163.

Includes bibliographical references.

Pace, William R. The relationship between the International Criminal Court and non-governmental organizations. In: *Reflections on the International Criminal Court: essays in honor of Adriaan Bos*. Edited by Herman A. M. von Hebel, Johan G. Lammers and Jolien Schukking (The Hague: T. M. C. Asser Press, 1999). p. 189-211.

Includes bibliographical references.

Ranjeva, R. Les organisations non gouvernementales et la mise en oeuvre du droit international. *Recueil des cours (Hague Academy of International Law)*, vol. 270 (1997):9-106.

Includes bibliographical references.

Short, Nicola. The role of NGOs in the Ottawa Process to ban landmines. *International negotiation: a journal of theory and practice* 4(3) 1999:481-500.

Includes bibliographical references.

Peaceful settlement of disputes

Distefano, Giovanni. La sentence arbitrale du 9 octobre 1998 dans l'affaire du différend insulaire entre le Yemen et l'Erythrée. *Revue générale de droit international public* 103(4) 1999:851-890.

Summaries in French, English and Spanish. Includes bibliographical references.

Dunn, Seamus. Northern Ireland: a promising or partisan peace? *Journal of international affairs* 52(2) spring 1999:719-733.

Includes bibliographical references.

Elagab, Omer Yousif. The place of non-forcible counter-measures in contemporary international law. In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 125-151.

Includes bibliographical references.

Petersmann, Ernst-Ulrich. Constitutionalism and international adjudication: How to constitutionalize the U.N. dispute settlement system? *New York University journal of international law and politics* 31(4) summer 1999:753-790.

Includes bibliographical references.

_____. Proposals for strengthening the UN dispute settlement system—Lessons from international economic law. *Max Planck yearbook of United Nations law*, vol. 3 (1999): 105-156.

Includes bibliographical references.

Riquelme Cortado, Rosa María. La promoción de medios y métodos de arreglo pacífico de las controversias en la conmemoración del centenario de la primera conferencia internacional de la paz (1899-1999). *Anuario de derecho internacional*, vol. XV (1999):385-478.

Includes bibliographical references.

Treves, Tullio. Le controversie internazionali: nuove tendenze, nuovi tribunali (Milan: Giuffrè, 1999). xii, 292 p.

Includes bibliographical references.

Political and security questions

Adelman, Howard. Early warning and prevention: the United Nations and Rwanda. In: *Refugee rights and realities: evolving international concepts and regimes*. Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 289-309.

Includes bibliographical references. Bibliography: p. 309.

A fragile peace: laying the foundations for justice in Kosovo (New York: Lawyers Committee for Human Rights, 1999). 35 p.

Includes bibliographical references.

Tshibangu, Kalala. La décision de l'O.U.A. de ne plus respecter les sanctions décrétées par l'O.N.U. contre la Libye: désobéissance civile des Etats africains à l'égard de l'O.N.U. *Revue belge de droit international* XXXII(2) 1999:545-576.

Includes bibliographical references.

Villani, Ugo. Lo *status* di Gerusalemme nel diritto internazionale. *La Comunità internazionale* LIV(2) 1999:217-236.

Includes bibliographical references.

Willum, Bjørn. Legitimizing inaction towards genocide in Rwanda: a matter of misperception? *International peacekeeping* 6(3) autumn 1999:11-30.

Includes bibliographical references.

Progressive development and codification of international law (in general)

Finke, Jasper, and Christiane Wandscher. Die Tätigkeit der International Law Commission in den Jahren 1997 und 1998. *German yearbook of international law*, vol. 41 (1998):523-554.

Includes bibliographical references.

Kateka, James L. The 50th session of the United Nations International Law Commission. *African yearbook of international law*, vol. 6 (1998):229-244.

Includes bibliographical references.

Morris, Virginia, and M.-Christiane Bourloyannis-Vrailas. The work of the Sixth Committee at the fifty-third session of the UN General Assembly. *American journal of international law* 93(3) July 1999:722-732.

Includes bibliographical references.

Pinto, M.C.W. The International Law Commission: representative of civilization, agent of change. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 595-602.

Includes bibliographical references.

Rosenstock, Robert. The fiftieth session of the International Law Commission. *American journal of international law* 93(1) January 1999:236-245.

Includes bibliographical references.

Simma, Bruno. The work of the International Law Commission at its fifty-first session (1999). *Nordic journal of international law* 68(3) 1999:293-361.

Includes bibliographical references.

Watts, Sir Arthur. *The International Law Commission, 1949-1998* (Oxford; New York: Oxford University Press, 1999). 3 v.

Includes bibliographical references and indexes.

Recognition of States

Crawford, James. Israel (1948-1949) and Palestine (1998-1999): two studies in the creation of states. In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 95-124.

Includes bibliographical references.

Hartwig, Matthias. Die Legitimation des Staates durch Verfassungsrezeption in Mittel- und Osteuropa. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 59(4) 1999: 919-939.

Summary in English. Includes bibliographical references.

Hummer, Waldemar, and Jelka Mayr-Singer. Das heutige Jugoslawien und die Organe der Vereinten Nationen. *Vereinte Nationen* 47(3) Juni 1999:104-108.

Includes bibliographical references.

Refugees

Alexander, Michael. Refugee status determination conducted by UNHCR. *International journal of refugee law* 11(2) 1999:251-289.

Includes bibliographical references.

Carlier, Jean-Yves. The Geneva refugee definition and the "theory of the three scales". In: *Refugee rights and realities: evolving international concepts and regimes*. Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 37-54.

Includes bibliographical references. Bibliography: p. 54.

Clark, Tom, in cooperation with François Crepeau. Mainstreaming refugee rights. The 1951 Refugee Convention and international human rights law. *Netherlands quarterly of human rights* 17(4) December 1999:389-410.

Includes bibliographical references.

Cunliffe, S. Alex, and Michael Pugh. UNHCR as leader in humanitarian assistance: a triumph of politics over law? In: *Refugee rights and realities: evolving international concepts and regimes*. Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 175-199.

Includes bibliographical references. Bibliography: p. 199.

Docquir, Pierre-François. Le droit de retour des réfugiés et personnes déplacées en Bosnie-Herzégovine. *Hague yearbook of international law*, vol. 11 (1998):67-82.

Includes bibliographical references.

The end of the refugee cycle? Refugee repatriation and reconstruction. Edited by Richard Black and Khalid Koser (New York: Berfhahn Books, 1999). vi, 275 p.

Bibliography: p. 249-270. Includes index.

Goodwin-Gill, Guy S. Refugee identity and protection's fading prospect. In: *Refugee rights and realities: evolving international concepts and regimes*. Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 220-249.

Includes bibliographical references. Bibliography: p. 248-249.

Mooney, Erin D. In-country protection: out of bounds for UNHCR? In: *Refugee rights and realities: evolving international concepts and regimes*. Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 200-219.

Includes bibliographical references. Bibliography: p. 218-219.

Refugee rights and realities: evolving international concepts and regimes. Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). xxix, 391 p.

Includes bibliographical references and index.

Sitaropoulos, Nicholas. Refugeehood: a legal definition in search of a principled interpretation by domestic fora. *Revue hellénique de droit international,* 52ème année (1) 1999:151-190

Includes bibliographical references.

Stavropoulou, Maria. Searching for human security and dignity: human rights, refugees and the internally displaced. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 175-183.

Includes bibliographical references.

Steinbock, Daniel J. The refugee definition as law: issues of interpretation. In: *Refugee rights and realities: evolving international concepts and regimes.* Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 13-36.

Includes bibliographical references. Bibliography: p. 35-36.

Sztucki, Jerzy. Who is a refugee? The Convention definition: universal or obsolete? In: *Refugee rights and realities: evolving international concepts and regimes.* Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 55-80.

Includes bibliographical references. Bibliography: p. 78-80.

Türk, Volker. The role of UNHCR in the development of international refugee law. In: *Refugee rights and realities: evolving international concepts and regimes.* Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 153-174.

Includes bibliographical references. Bibliography: p. 173-174.

Right of asylum

Plender, Richard, and Nuala Mole. Beyond the Geneva Convention: constructing a *de facto* right of asylum from international human rights instruments. In: *Refugee rights and realities: evolving international concepts and regimes.* Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 81-105.

Includes bibliographical references. Bibliography: p. 105.

Tcheuwa, Jean-Claude. L'asile diplomatique et son avenir en droit des organisations internationales. *Revue hellénique de droit international,* 52ème année (1) 1999:131-150.

Includes bibliographical references.

Vedsted-Hansen, Jens. Non-admission policies and the right to protection: refugees' choice versus states' exclusion? In: *Refugee rights and realities: evolving international concepts and regimes.* Edited by Frances Nicholson and Patrick Twomey (Cambridge, England: Cambridge University Press, 1999). p. 269-288.

Includes bibliographical references. Bibliography: p. 287-288.

Rule of law

Sands, Philippe J. The future of international adjudication. *Connecticut journal of international law* 14(1) summer 1999:1-13.

Includes bibliographical references. Concerns the United States.

Stein, Andreas. *Der Sicherheitsrat der Vereinten Nationen und die rule of law: Auslegung und Rechtsfortbildung des Begriffs der Friedensbedrohung bei humanitären Interventionen*

auf der Grundlage des Kapitels VII der Charta der Vereinten Nationen (Baden-Baden: Nomos, 1999). xiv, 423 p.
Bibliography: p. 395-423.

Self-defence

Schwabach, Aaron. The legality of the NATO bombing operation in the Federal Republic of Yugoslavia. *Pace international law review* XI(2) fall 1999:405-418.
Includes bibliographical references.

Self-determination

Corten, Olivier. A propos d'un désormais "classique": Le droit à l'autodétermination en dehors des situations de décolonisation, de Théodore Christakis. *Revue belge de droit international* XXXII(l) 1999:329-349.
Includes bibliographical references.

Crawford, James. State practice and international law in relation to succession. *British year book of international law*, vol. 69 (1998):85-117.
Includes bibliographical references.

Gabor, Francis A. Quo Vadis Domine: reflections on individual and ethnic self-determination under an emerging international legal regime. *The international lawyer* 33(3) fall 1999: 809-824.
Includes bibliographical references.

Grant, Thomas D. Extending decolonization: how the United Nations might have addressed Kosovo. *Georgia journal of international and comparative law* 28(1) 1999:9-54.
Includes bibliographical references.

McWhinney, Ted. Self-determination of peoples in contemporary constitutional and international law. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 725-733.
Includes bibliographical references.

Oloka-Onyango, J. Heretical reflections on the right to self-determination: prospects and problems for a democratic global future in the new millennium. *American University international law review* 15(1) 1999:151-208.
Includes bibliographical references.

Ringelheim, Julie. Considerations on the international reaction to the Kosovo crisis. *Revue belge de droit international* XXXII(2) 1999:475-544.
Includes bibliographical references.

Simmler, Christiane. Selbstbestimmungsrecht der Völker contra *uti possidetis*? *Verfassung und Recht in Übersee/Law and politics in Africa, Asia and Latin America* 32(2) 1999: 210-235.
Includes bibliographical references.

Szasz, Paul C. The irresistible force of self-determination meets the impregnable fortress of territorial integrity: a cautionary fairy tale about clashes in Kosovo and elsewhere. *Georgia journal of international and comparative law* 28(1) 1999:1-8.
Includes bibliographical references.

Welhengama, Gnanapala. The legitimacy of minorities' claim for autonomy through the right to self-determination. *Nordic journal of international law* 68(4) 1999:413-438.
Includes bibliographical references.

Wright, Jane. Minority groups, autonomy, and self-determination. *Oxford journal of legal studies* 19(4) winter 1999:605-629.
Includes bibliographical references.

State responsibility

Abi-Saab, Georges. The use of Article 19. *European journal of international law* 10(2) 1999: 339-351.
Includes bibliographical references.

Besné Mañero, Rosario. *El crimen international: nuevos aspectos de la responsabilidad internacional de los Estados* (Bilbao, Spain: Universidad de Deusto, 1999). 265 p.
Includes bibliographical references.

Crawford, James. Revising the draft articles on state responsibility. *European journal of international law* 10(2) 1999:435-463.
Includes bibliographical references.

Dominicé, Christian. The international responsibility of states for breach of multilateral obligations. *European journal of international law* 10(2) 1999:353-363.
Includes bibliographical references.

Dupuy, Pierre-Marie. Reviewing the difficulties of codification: on Ago's classification of obligations of means and obligations of result in relation to state responsibility. *European journal of international law* 10(2) 1999:371-385.
Includes bibliographical references.

Gray, Christine. The choice between restitution and compensation. *European journal of international law* 10(2) 1999:413-423.
Includes bibliographical references.

Jørgenson, Nina. State responsibility and the 1948 Genocide Convention. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 273-291.
Includes bibliographical references.

Okowa, Phoebe N. Defences in the jurisprudence of international tribunals. In: *The reality of international law: essays in honour of Ian Brownlie.* Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 389-411.
Includes bibliographical references.

Pellet, Alain. Can a state commit a crime? Definitely, yes! *European journal of international law* 10(2) 1999:425-434.
Includes bibliographical references.

Symposium: State responsibility. *European journal of international law* 10(2) 1999:339-460.
Series of articles. Includes bibliographical references.

State succession

Czaplinski, Wladyslaw. Equity and equitable principles in the law of state succession. In: *Succession of states.* Edited by Mojmir Mrak (The Hague; Boston, Mass.: Kluwer Law International, 1999). p. 61-73.
Includes bibliographical references.

Démembrements d'états et délimitations territoriales: *l'uti possidetis en question(s)* (Bruxelles: Editions Bruylant; Editions de l'Université de Bruxelles, 1999). 455 p.

Economides, Constantin P. Les effets de la succession d'Etats sur la nationalité des personnes physiques. *Revue générale de droit international public* 103(3) 1999:577-599.
Summaries in French, English and Spanish. Includes bibliographical references.

Shihata, Ibrahim F.I. Matters of state succession in the World Bank's practice. In: *Succession of states*. Edited by Mojmir Mrak (The Hague; Boston, Mass.: Kluwer Law International, 1999). p. 75-93.
Includes bibliographical references.

Succession of states. Edited by Mojmir Mrak (The Hague; Boston, Mass.: Kluwer Law International, 1999). xxi, 218 p.
Includes bibliographical references and indexes.

Technical cooperation

Timmerman, Andreas. Der Transfer von Umwelttechnologien in Entwicklungsländer: rechtlicher Rahmen für einen Interessenausgleich. *Verfassung und Recht in Übersee/Law and politics in Africa, Asia and Latin America* 32(3) 1999:314-334.
Includes bibliographical references.

Trade and development

Abu-Akeel, Aly K. Definition of trade in services under the GATS: legal implications. George Washington journal of international law and economics 32(2) 1999:189-210.
Includes bibliographical references.

Dunoff, Jeffrey L. The death of the trade regime. *European journal of international law* 10(4) 1999:733-762.
Includes bibliographical references.

Wieczorek-Zeul, Heidemarie. Nachhaltige Entwicklung durch globale Strukturpolitik: neue Akzente deutscher Entwicklungspolitik. *Vereinte Nationen* 47(3) Juni 1999:100-103.

Trusteeship

Franckx, Erik, Anne Pauwels and Stefaan Smis. An international trusteeship for Kosovo: attempt to find a solution to the conflict. *Studia diplomatica* LII(5-6) 1999:155-166.
Includes bibliographical references.

Use of force

Antonopoulos, Constantine. The NATO military action against the Federal Republic of Yugoslavia (Kosovo) and the international law on the use of force. Revue hellénique de droit international, 52ème année (2) 1999:411-457.
Includes bibliographical references.

_____. The unilateral use of force by states after the end of the Cold War. *Journal of armed conflict law* 4(1) June 1999:117-160.
Includes bibliographical references.

Bermejo García, Romualdo. Cuestiones actuales referentes al uso de la fuerza en el derecho internacional. *Anuario de derecho internacional*, vol. XV (1999):3-70.
Includes bibliographical references.

Cassese, Antonio. *Ex iniuria ius oritur*: Are we moving towards international legitimation of forcible humanitarian countermeasures in the world community? *European journal of international law* 10 (1) 1999:23-30.
Includes bibliographical references.

Cox, Katherine E. Beyond self-defense: United Nations peacekeeping operations and the use of force. *Denver journal of international law and policy* 27(2) spring 1999:239-273.
Includes bibliographical references.

Economides, Constantin. La guerre de l'OTAN contre la Yougoslavie et le droit international. *Revue hellénique de droit international*, 52ème année (2) 1999:391-409.
Includes bibliographical references.

Ford, Stuart. Legal processes of change: article 2(4) and the Vienna Convention on the law of treaties. *Journal of armed conflict law* 4(1) June 1999:75-116.
Includes bibliographical references.

Lobel, Jules, and Michael Ratner. Bypassing the Security Council: ambiguous authorizations to use force, cease-fires and the Iraqi inspection regime. *American journal of international law* 93(1) January 1999:124-154.
Includes bibliographical references.

Murphy, Michael K. Achieving economic security with swords as ploughshares: the modern use of force to combat environmental degradation. *Virginia journal of international law* 39(4) summer 1999:1181-1219.
Includes bibliographical references.

Murphy, Ray. UN peacekeeping in Lebanon and the use of force. *International peacekeeping* 6(2) summer 1999:38-63.
Includes bibliographical references.

Schmitt, Michael N. Computer network attack and the use of force in international law: thoughts on a normative framework. *Columbia journal of transnational law* 37(3) 1999: 885-937.
Includes bibliographical references.

Sharp, Walter Gary. Operation allied force: reviewing the lawfulness of NATO's use of military force to defend Kosovo. *Maryland journal of international law and trade* 23(1) spring/ summer 1999:295-329.
Includes bibliographical references.

Simma, Bruno. NATO, the UN and the use of force: legal aspects. *European journal of international law* 10(1) 1999:1-22.
Includes bibliographical references.

Weckel, Philippe. Cour international de Justice, affaires relatives à la licéité de l'emploi de la force. *Revue générale de droit international public* 103(3) 1999:697-708.
Includes bibliographical references.

White, Nigel D., and Robert Cryer. Unilateral enforcement of resolution 687: a threat too far? *California Western international law journal* 29(2) spring 1999:243-282.
Includes bibliographical references.

C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

General Agreement on Tariffs and Trade

Gaffney, John. The GATT and the GATS: should they be mutually exclusive agreements? *Leiden journal of international law* 12(1) 1999:135-153.
Includes bibliographical references.

International Civil Aviation Organization

Milde, Michael. The Warsaw system of liability in international carriage by air: history, merits and flaws and the new "non-Warsaw" Convention of 28 May 1999. *Annals of air and space law*, vol. XXIV (1999):155-186.

Includes bibliographical references.

Schubert, Francis P. An international convention on GNSS liability: when does desirable become necessary? *Annals of air and space law*, vol. XXIV (1999):245-273.

Weber, Ludwig, and Arie Jakob. Activities of the International Civil Aviation Organization (ICAO). *Annals of air and space law*, vol. XXIV (1999):397-405.

_____. The modernization of the Warsaw System: the Montreal Convention of 1999. *Annals of air and space law*, vol. XXIV (1999):333-353.

Includes bibliographical references.

International Labour Organization

Cox, Laura. The International Labour Organisation and fundamental rights at work. *European human rights law review*, vol. 5 (1999):451-458.

Swepston, Lee. International Labour Organization (ILO) standards and human rights. In: *The Universal Declaration of Human Rights: fifty years and beyond.* Edited by Yael Danieli, Elsa Stamatopoulou and Clarence J. Dias (Amityville, N.Y.: Baywood Pub. Co., 1999). p. 37-44.

Includes bibliographical references.

International Maritime Organization

Gaskell, Nicholas, and Richard Shaw. The Arrest Convention 1999. *Lloyd's maritime and commercial law quarterly*, No. 4 (November 1999):470-490.

Contains text of the Convention. Includes bibliographical references.

International Monetary Fund

Denters, E. New challenges to IMF jurisdiction. *Netherlands yearbook of international law*, vol. XXIX (1998):3-43.

Includes bibliographical references.

Humphreys, Norman K. *Historical dictionary of the International Monetary Fund.* 2nd ed. (Lanham, Md.: Scarecrow Press Inc., 1999). xl, 330 p.

Bibliography: p. 285-330.

The International Monetary Fund—financial medic to the world: a primer on mission, operations, and public policy issues. Edited by Lawrence J. McQuillan and Peter C. Montgomery (Stanford, Calif.: Hoover Institution Press, 1999). xvii, 245 p.

Bibliography: p. 232-234. Includes index.

Leckow, Ross. The International Monetary Fund and strengthening the architecture of the International Monetary System. *Law and policy in international business*, vol. 30 (supplement) 1999:117-130.

Includes bibliographical references.

_____. The role of the International Monetary Fund in the liberalization of capital movements. *Wisconsin international law journal* 17(3) fall 1999:515-526.

Includes bibliographical references.

International Telecommunication Union

Dehousse, Franklin, and Tania Zgajewski. De l'U.I.T. à l'O.M.C: les mutations du droit international des télécommunications. *Revue belge de droit international* XXXII(l) 1999: 271-328.

Includes bibliographical references. Bibliography: p. 327-328.

World Bank

Bekhechi, Mohammed Abdelwahab. Some observations regarding environmental covenants and conditionalities in World Bank lending activities. *Max Planck yearbook of United Nations law*, vol. 3 (1999):287-314.

Includes bibliographical references.

Kingsbury, Benedict. Operational policies of international institutions as part of the law-making process: the World Bank and indigenous peoples. In: *The reality of international law: essays in honour of Ian Brownlie*. Edited by Guy S. Goodwin-Gill and Stefan Talmon (Oxford; New York: Clarendon Press, 1999). p. 323-342.

Includes bibliographical references.

Miller-Adams, Michelle. *The World Bank: new agendas in a changing world* (London; New York: Routledge, 1999). xii, 176 p.

Bibliography: p. 160-169. Includes index.

Shihata, Ibrahim F. I. La banque mondiale et les droits de l'homme. *Revue belge de droit international* XXXII(l) 1999:86-96.

_____. The World Bank and the world debt problems. In: *Liber Amicorum Judge Mohammed Bedjaoui*. Edited by Emile Yakpo and Tahar Boumedra (The Hague; London; Boston, Mass.: Kluwer Law International, 1999). p. 615-627.

Includes bibliographical references.

Theobald, Christian. The World Bank: good governance and the new institutional economics. *Law and state*, vol. 59/60 (1999):17-39.

Bibliography: p. 36-39.

Wadrzyk, Mark. Is it appropriate for the World Bank to promote democratic standards in a borrower country? *Wisconsin international law journal* 17(3) fall 1999:553-577.

Includes bibliographical references.

Webb, Douglas. Legal and institutional reform strategy and implementation: a World Bank perspective. *Law and policy in international business*, vol. 30 (supplement) (1999):161-170.

Woicke, Peter L. Geschäftszweck: Förderung des privaten Sektors: die Internationale Finanz-Corporation (IFC). *Vereinte Nationen* 47(5) Oktober 1999:157-162.

International Centre for Settlement of Investment Disputes

Shihata, Ibrahim F. I., and Antonio R. Parra. The experience of the International Center for Settlement of Investment Disputes. *ICSID review-foreign investment law journal* 14(2) fall 1999:299-361.

Includes bibliographical references.

World Health Organization

Vignes, Claude-Henri. Mythes et réalité: le statut des membres du Conseil exécutif de l'Organisation mondiale de la Santé. *Revue générale de droit international public* 103(3) 1999:685-696.

Includes bibliographical references.

World Trade Organization

Ala'i, Padideh. Free trade or sustainable development? An analysis of the WTO appellate body's shift to a more balanced approach to trade liberalization. *American University international law review* 14(4) 1999:1129-1171.
Includes bibliographical references.

Das, Bhagirath Lal. *The World Trade Organisation: a guide to the new framework for international trade* (London; New York: Zed Books Ltd., 1999). 460 p.
Bibliography: p. 439-440. Includes index.

Developing nations and the agreement on trade-related aspects of intellectual property rights. *Colorado journal of international environmental law and policy: yearbook*, 1999:49-64.
Includes bibliographical references.

Gaffney, John P. Due process in the World Trade Organization: the need for procedural justice in the dispute settlement system. *American University international law review* 14(4) 1999:1173-1221.
Includes bibliographical references.

Jackson, John H. Fragmentation or unification among international institutions: the World Trade Organization. *New York University journal of international law and politics* 31(4) summer 1999:823-831.
Includes bibliographical references.

Jarreau, J. Steven. Interpreting the General Agreement on Trade in Services and the WTO instruments relevant to the international trade of financial services: the lawyer's perspective. *North Carolina journal of international law and commercial regulation* 25(1) fall 1999:1-74.
Includes bibliographical references.

Joergens, Konstantin J. True appellate procedure or only a two-stage process? A comparative view of the appellate body under the WTO dispute settlement understanding. *Law and policy in international business* 30(2) 1999:193-229.
Includes bibliographical references.

Mota, Sue Ann. The World Trade Organization: an analysis of disputes. *North Carolina journal of international law and commercial regulation* 25(1) fall 1999:75-105.
Includes bibliographical references.

Neuling, Bruce. The Shrimp-Turtle Case: implications for Article XX of GATT and the trade and environment debate. *Loyola of Los Angeles international and comparative law review* 22(1) October 1999:1-50.
Includes bibliographical references.

Palmeter, N. David, and Petros C. Mavroidis. *Dispute settlement in the World Trade Organization: practice and procedure* (The Hague; Boston, Mass.: Kluwer Law International, 1999). xvi, 313 p.
Includes bibliographical references (p. 183-185) and index.

Pearlman, Jessica C. Participation by private counsel in World Trade Organization dispute settlement proceedings. *Law and policy in international business* 30(2) 1999:399-415.
Includes bibliographical references.

Pratap, Ravindra. Remedial jurisprudence of the Multilateral Trading System: a perspective. *Indian journal of international law* 39(2) April-June 1999:251-276.
Includes bibliographical references.

Pyatt, Suzanne. The WTO Sea Turtle decision. *Ecology law quarterly* 26(4) 1999:815-838.
Includes bibliographical references.

Ruiz Fabri, Hélène. L'appel dans le règlement des différends de l'0.M.C: trois ans après, quinze rapports plus tard. *Revue générale de droit international public* 103(1) 1999:47-128.
Summaries in French, English and Spanish. Includes bibliographical references.

Sakmar, Susan L. Free trade and sea turtles: the international and domestic implications of the *Shrimp-turtles* case. *Colorado journal of international environmental law and policy* 10(2) summer 1999:345-395.
Includes bibliographical references.

Schloemann, Hannes L., and Stefan Ohlhoff. "Constitutionalization" and dispute settlement in the WTO: national security as an issue of competence. *American journal of international law* 93(2) April 1999:424-451.
Includes bibliographical references.

Stoll, Peter-Tobias, and Arthur Steinmann. WTO dispute settlement: the implementation stage. *Max Planck yearbook of United Nations law*, vol. 3 (1999):407-437.
Includes bibliographical references.

Tarasofsky, Richard G. The WTO Committee on Trade and Environment: Is it making a difference? *Max Planck yearbook of United Nations law*, vol. 3 (1999):471-488.
Includes bibliographical references.

Trachtman, Joel P. Bananas, direct effect and compliance. *European journal of international law* 10(4) 1999:655-678.
Includes bibliographical references.

_____. The domain of WTO dispute resolution. *Harvard international law journal* 40(2) spring 1999:333-377.
Includes bibliographical references.

The United States and shrimp import prohibitions: refusing to surrender the American Goliath role in conservation. *Maryland journal of international law and trade* 23(1) spring/summer 1999:247-290.
Includes bibliographical references.

Van der Borght, Kim. The review of the WTO understanding on dispute settlement: some reflections on the current debate. *American University international law review* 14(4) 1999:1223-1243.
Includes bibliographical references.

Virzo, Roberto. Note sulla successione tra organizzazioni internazionali, con particolare riferimento alla transformazione del GATT nell'OMC. *La Comunità internazionale* LIV(2) 1999:296-312.
Includes bibliographical references.

Weiss, F. The WTO and the progressive development of international trade law. *Netherlands yearbook of international law*, vol. XXIX (1998):71-115.
Includes bibliographical references.

World Trade Organization. *The legal texts: the results of the Uruguay round of multilateral trade negotiations* (Cambridge, England; New York: Cambridge University Press, 1999). ix, 492 p.

The World Trade Organization millennium conference in Seattle: the WTO recognizes a relationship between trade and the environment and its effect on developing countries. *Colorado journal of international environmental law and policy: yearbook*, 1999:33-48.
Includes bibliographical references.

Ziegler, Andreas R. Scope and function of the WTO appellate system: What future after the millennium round? *Max Planck yearbook of United Nations law*, vol. 3 (1999):439-470.
Includes bibliographical references.