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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 fortieth 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 2002.

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.

Chapter V contains decisions of administrative tribunals of the United Nations system, while chapter VI provides a selection of legal opinions of the secretariats of the United Nations and related organizations. Decisions given in 2002 by international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

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 2002.

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

ABBREVIATIONS

ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and the Caribbean
ESCAP	Economic and Social Commission for Asia and the Pacific
ESCWA	Economic and Social Commission for Western Asia
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Cooperation
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IPU	Inter-Parliamentary Union
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
MIGA	Multilateral Investment Guarantee Agency
UNCHS	United Nations Centre for Human Settlement (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
UNJSPF	United Nations Joint Staff Pension Fund
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNU	United Nations University
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

1. Belgium

LAW CONVEYING ACCEPTANCE OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES, 1947

FEDERAL PUBLIC SERVICE OF FOREIGN AFFAIRS, EXTERNAL TRADE AND DEVELOPMENT COOPERATION

F. 2003—697 [2003/15016]

8 April 1954

LAW CONVEYING ACCEPTANCE OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES, APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS IN NEW YORK ON 21 NOVEMBER 1947 AT ITS SECOND SESSION (I)—ADDENDUM

On 23 December 2002 the Kingdom of Belgium undertook to apply the provisions of the above-mentioned Convention to the following specialized agencies, pursuant to section 43 of the Convention:

Annex X

INTERNATIONAL REFUGEE ORGANIZATION

The standard clauses shall operate without modification.

Annex XV

WORLD INTELLECTUAL PROPERTY ORGANIZATION

In their application to the World Intellectual Property Organization (hereinafter called “the Organization”), the standard clauses shall operate subject to the following modifications:

1. The privileges, immunities, exemptions and facilities referred to in article VI, section 21, of the standard clauses shall also be accorded to the Deputy Directors-General of the Organization.

2. (a) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

- (i) Immunity from personal arrest or seizure of their personal baggage;
- (ii) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;
- (iii) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;
- (iv) Inviolability for all papers and documents relating to the work on which they are engaged for the Organization;
- (v) For their communications with the Organization, the right to use codes and to receive documents and correspondence by courier or in sealed dispatch bags.

In connection with (iv) and (v) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable.

(b) Privileges and immunities are granted to the experts referred to in paragraph (a) above in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

Annex XVI

INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

In their application to the International Fund for Agricultural Development (hereinafter called "the Fund") the standard clauses shall operate subject to the following provisions:

1. The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to any Vice-President of the Fund.

2. (i) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Fund shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) Immunity from personal arrest or seizure of their personal baggage;

(b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Fund;

(c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;

(d) Inviolability of their papers and documents relating to the work on which they are engaged for the Fund and, for the purpose of their communications with the Fund, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(ii) In connection with (d) of 2 (i) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable;

(iii) Privileges and immunities are granted to the experts in the interests of the Fund and not for the personal benefit of the individuals themselves. The Fund shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Fund.

Annex XVII

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

In their application to the United Nations Industrial Development Organization (hereinafter called “the Organization”) the standard clauses shall operate subject to the following modification:

1. (a) Experts (other than officials coming within the scope of article VI) serving as committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time on journeys in connection with service on such committees or missions:

(i) Immunity from personal arrest or detention and from seizure of their personal baggage;

- (ii) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the person concerned is no longer serving on committees of, or employed on mission for, the Organization;
 - (iii) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;
 - (iv) Inviolability for all papers and documents;
 - (v) For their communications with the Organization, the right to use codes and to receive documents and correspondence by courier or in sealed bags;
- (b) In connection with subparagraphs (iv) and (v) of paragraph 1 (a) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable;
- (c) Privileges and immunities are granted to experts of the Organization in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organization;

2. The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to any Deputy Director-General of the Organization.

On 23 December 2002 the Kingdom of Belgium accepted the following revised annexes, in accordance with section 47 of the Convention:

Second revised text of annex II

THE FOOD AND AGRICULTURE ORGANIZATION
OF THE UNITED NATIONS

In their application to the Food and Agriculture Organization of the United Nations (hereinafter called “the Organization”) the standard clauses shall operate subject to the following provisions:

1. Article V and section 25, paragraphs 1 and 2 (1), of article VII shall extend to the Chairman of the Council of the Organization and to the representatives of Associate Members, except that any waiver of the immunity of the Chairman under section 16 shall be by the Council of the Organization.

2. (i) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization

shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) Immunity from personal arrest or seizure of their personal baggage;

(b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity of legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;

(c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;

(d) Inviolability of their papers and documents relating to the work on which they are engaged for the Organization and, for the purpose of their communications with the Organization, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(ii) In connection with (d) of 2 (i) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable;

(iii) Privileges and immunities are granted to the experts in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and the duty to waive the immunity of any experts in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organization.

3. The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall be accorded to the Deputy Director-General and the Assistant Directors-General of the Organization.

Third revised text of annex VII

THE WORLD HEALTH ORGANIZATION

In their application to the World Health Organization (hereinafter called “the Organization”) the standard clauses shall operate subject to the following modifications:

1. Article V and section 25, paragraphs 1 and 2 (I), of article VII shall extend to persons designated to serve on the Executive Board of the Organization, their alternates and advisers, except that any waiver of the immunity of any such persons under section 16 shall be by the Board.

2. (i) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Or-

ganization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) Immunity from personal arrest or seizure of their personal baggage;

(b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;

(c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;

(d) Inviolability for all papers and documents;

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

(ii) The privileges and immunities set forth in paragraphs (b) and (e) above shall be accorded to persons serving on Expert Advisory Panels of the Organization in the exercise of their functions as such;

(iii) Privileges and immunities are granted to the experts of the Organization in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

3. Article V and section 25, paragraphs 1 and 2 (I), of article VII shall extend to the representatives of Associate Members participating in the work of the Organization in accordance with articles 8 and 47 of the Constitution.

4. The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to any Deputy Director-General, Assistant Director-General and Regional Director of the Organization.

Revised text of annex XII

INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

1. The privileges and immunities, exemptions and facilities referred to in article VI, section 21, of the standard clauses shall be accorded to the Secretary-General of the Organization, to the Deputy Secretary-General

and to the Secretary of the Maritime Safety Committee, provided that the provisions of this paragraph shall not require the Member in whose territory the Organization has its Headquarters to apply article VI, section 21, of the standard clauses to any person who is its national.

2. (a) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including time spent on journeys in connection with service on such committees or missions:

- (i) Immunity from personal arrest or seizure of their personal baggage;
- (ii) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;
- (iii) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;
- (iv) Inviolability for all papers and documents relating to the work on which they are engaged for the Organization;
- (v) The right to use codes and to receive documents and correspondence by courier or in sealed dispatch bags for their communications with the Intergovernmental Maritime Consultative Organization.

In connection with section 2 (a) (iv) and (v) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable.

(b) Privileges and immunities are granted to such experts in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

2. Canada

FIRST SESSION, THIRTY-SEVENTH PARLIAMENT,

49-50-51 ELIZABETH II, 2001-2002

STATUTES OF CANADA 2002

CHAPTER 12

AN ACT TO AMEND THE FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

Bill C-35—Assented to 30 April 2002

Summary

This enactment amends the Foreign Missions and International Organizations Act to modernize the privileges and immunities regime. This will allow Canada to comply with its existing commitments under international treaties and to respond to recent developments in international law. The enactment also corrects the deficiency in the existing statutory definition of “international organization”. The enactment further provides that the Royal Canadian Mounted Police has the primary responsibility to ensure the security for the proper functioning of intergovernmental conferences. This clearer statutory authority supports security measures taken by Canadian police in fulfilling Canada’s obligations to protect persons who have privileges and immunities under the Act.

All parliamentary publications are available on the “Parliamentary Internet Parlementaire” at the following address: <http://www.parl.gc.ca>.

49-50-51 ELIZABETH II

CHAPTER 12

AN ACT TO AMEND THE FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

[Assented to 30th April 2002]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

1. (1) The definition “international organization” in subsection 2 (1) of the *Foreign Missions and International Organizations Act* is replaced by the following:

“international organization”

“‘international organization’ means an intergovernmental organization, whether or not established by treaty, of which two or more

states are members, and includes an intergovernmental conference in which two or more states participate;”

(2) Subsection 2 (1) of the Act is amended by adding the following in alphabetical order:

“accredited mission”

“‘accredited mission’ means a permanent mission of a foreign state that is accredited to an international organization headquartered in Canada;”

2. Section 4 of the Act is amended by adding the following after subsection (3):

Detention of goods

“(4) The Minister of Foreign Affairs may, by order, authorize the detention by officers under the Customs Act of goods imported by a diplomatic mission or consular post of a foreign state for any period during which, in the opinion of the Minister, the foreign state applies any of the provisions of the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations restrictively with the result that the privileges and immunities accorded to that state’s diplomatic mission and consular posts in Canada exceed those accorded to a Canadian diplomatic mission and Canadian consular posts in that foreign state.”

3. (1) The portion of subsection 5 (1) of the English version of the Act before paragraph (a) is replaced by the following:

Privileges and immunities

“5. (1) The Governor in Council may, by order, provide that”

(2) Paragraphs 5 (1) (c) to (e) of the Act are replaced by the following:

“(b.1) subject to subsection (1.2), accredited missions shall, to the extent specified in the order, have privileges and immunities comparable to the privileges and immunities accorded to diplomatic missions of foreign states in Canada under the Vienna Convention on Diplomatic Relations;

“(c) representatives of a foreign state that is a member of or participates in an international organization shall, to the extent specified in the order, have the privileges and immunities set out in article IV of the Convention on the Privileges and Immunities of the United Nations;

“(d) representatives of a foreign state that is a member of an international organization headquartered in Canada, and members of their families forming part of their households, shall, to the extent specified in the order, have privileges and immunities comparable to

the privileges and immunities accorded to diplomatic representatives, and members of their families forming part of their households, in Canada under the Vienna Convention on Diplomatic Relations;

“(e) members of the administrative and technical staff, and members of their families forming part of their households, and the service staff of the mission of a foreign state that is a member of an international organization headquartered in Canada, other than persons who are Canadian citizens or permanent residents of Canada, shall, to the extent specified in the order, have privileges and immunities comparable to the privileges and immunities accorded to such persons under the Vienna Convention on Diplomatic Relations;”

...

(4) Subsection 5 (1) of the Act is amended by striking out the word “and” at the end of paragraph (h) and by adding the following after paragraph (h):

“(h.1) such other classes of persons as may be designated by the Governor in Council who, in accordance with a treaty, convention or agreement set out in Schedule IV, are entitled to privileges and immunities, and members of their families forming part of their households, shall, to the extent specified in the order, have privileges and immunities comparable to the privileges and immunities accorded to diplomatic agents, and members of their families forming part of their households, under the Vienna Convention on Diplomatic Relations; and”

(5) Section 5 of the Act is amended by adding the following after subsection (1):

Retroactive order

“(1.1) An order made under paragraph (1) (b) or subsection 6 (2) that has the effect of granting to an international organization or to an office of a political subdivision of a foreign state, as the case may be, any duty or tax relief privileges may, in relation to those privileges, if it so provides, be made retroactive.

Duty and tax relief privileges—accredited missions

“(1.2) An order made under paragraph (1) (b.1) may restrict or withdraw any duty or tax relief privileges in relation to a particular accredited mission for the purpose of according to that accredited mission treatment that is comparable to the treatment accorded by the foreign state in question to a Canadian permanent mission that is accredited to an international organization in that foreign state.

Retroactive order

“(1.3) An order made under paragraph (1) (b.1) that has the effect of granting to an accredited mission of the International Civil

Aviation Organization any tax relief privileges in relation to Part IX of the *Excise Tax Act* may, in relation to those privileges, if it so provides, be made retroactive and have effect with respect to any period beginning on January 1, 1991 at the earliest and ending on December 31, 2000 at the latest.”

(6) Section 5 of the Act is amended by adding the following after subsection (3):

Immigration restrictions

“(4) In the event of an inconsistency or conflict between an order made under subsection (1) and section 19 of the *Immigration Act*, the order prevails to the extent of the inconsistency or conflict.”

1995, c.5, par. 25 (1) (n)

4. Section 6 of the Act is replaced by the following:

Privileges, immunities and benefits

“6. (1) Subject to subsections (3) and (4), the Minister of Foreign Affairs may, by order,

“(a) grant to the office of a political subdivision of a foreign state, and to any person connected with that office, any of the privileges and immunities accorded under section 3 to consular posts, and to persons connected with those posts, other than duty and tax relief privileges;

“(b) extend any of the privileges and immunities granted under paragraph (a) to that office, and to any person connected with it;

“(c) grant to that office, and to any person connected with it, any of the benefits set out in the regulations;

“(d) withdraw any of the privileges, immunities or benefits granted under this subsection or subsection (2); and

“(e) restore any privilege, immunity or benefit withdrawn under paragraph (d).

Duty and tax relief privileges

“(2) Subject to subsections (3) and (4), on the joint recommendation of the Minister of Foreign Affairs and the Minister of Finance, the Governor in Council may, by order,

“(a) grant to the office of a political subdivision of a foreign state, and to any person connected with that office, any of the duty and tax relief privileges accorded under section 3 to consular posts and to persons connected with those posts;

“(b) extend any of the duty and tax relief privileges provided for in the Vienna Convention on Consular Relations that have been granted to that office, and to any person connected with it; and

“(c) grant to that office, and to any person connected with it, any duty or tax relief privilege not provided for in the Vienna Convention on Consular Relations.

Condition

“(3) Before the Minister makes an order under subsection (1) or the Governor in Council makes an order under subsection (2), the Minister or the Governor in Council, as the case may be, must be of the opinion that the office of the political subdivision of the foreign state performs, in Canada, duties that are substantially the same as the duties performed in Canada by a consular post as defined in article 1 of the Vienna Convention on Consular Relations.

Purpose of orders

“(4) An order made under subsection (1) or (2) must be for the purpose of according to the office of the political subdivision of the foreign state, and to any person connected with the office, treatment that is comparable

“(a) to the treatment accorded to the office of a Canadian political subdivision in the foreign state, and to persons connected with that office; or

“(b) if there is no office of a Canadian political subdivision in the foreign state, to the treatment that, in the opinion of the Minister or the Governor in Council, as the case may be, would, on the basis of assurances offered by that foreign state, be accorded to an office of a Canadian political subdivision in that foreign state, and to persons connected with that office.

Premises and archives

“(5) The Minister of Foreign Affairs may, by order, grant to the office of a political subdivision of a foreign state, and to the archives of that office, any of the immunities accorded to consular premises and consular archives by the Vienna Convention on Consular Relations for the purpose of according to that office treatment that is comparable

“(a) to the treatment accorded to the office of a Canadian political subdivision in the foreign state; or

“(b) if there is no office of a Canadian political subdivision in the foreign state, to the treatment that, in the opinion of the Minister, would, on the basis of assurances offered by that foreign state, be accorded to an office of a Canadian political subdivision in that foreign state.”

5. The Act is amended by adding the following after section 10:

“Security of intergovernmental conferences

Role of RCMP

“10.1 (1) The Royal Canadian Mounted Police has the primary responsibility to ensure the security for the proper functioning

of any intergovernmental conference in which two or more states participate, that is attended by persons granted privileges and immunities under this Act and to which an order made or continued under this Act applies.

Powers of RCMP

“(2) For the purpose of carrying out its responsibility under subsection (1), the Royal Canadian Mounted Police may take appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances.

For greater certainty

“(3) The powers referred to in subsection (2) are set out for greater certainty and shall not be read as affecting the powers that peace officers possess at common law or by virtue of any other federal or provincial Act or regulation.

Arrangements

“(4) Subject to subsection (1), to facilitate consultation and cooperation between the Royal Canadian Mounted Police and provincial and municipal police forces, the Solicitor General may, with the approval of the Governor in Council, enter into arrangements with the government of a province concerning the responsibilities of members of the Royal Canadian Mounted Police and members of provincial and municipal police forces with respect to ensuring the security for the proper functioning of a conference referred to in that subsection.”

1995, c.5, par. 25 (1) (n)

6. Section 11 of the Act is replaced by the following:

Certificate of Minister of Foreign Affairs

“11. A certificate purporting to be issued by or under the authority of the Minister of Foreign Affairs and containing any statement of fact relevant to any of the following questions shall be received in evidence in any action or proceeding as proof of the fact stated in the certificate without proof of the signature or official character of the person appearing to have signed the certificate:

“(a) whether a diplomatic mission, a consular post or an office of a political subdivision of a foreign state has been established with the consent of the Government of Canada;

“(b) whether an organization or conference is the subject of an order under section 5;

“(c) whether a mission is accredited to an international organization;

“(d) whether any premises or archives are the premises or archives of an office of a political subdivision of a foreign state; or

“(e) whether any person, diplomatic mission, consular post, office of a political subdivision of a foreign state, international organization or accredited mission has privileges, immunities or benefits under this Act.

“Importation of alcohol

Importation of alcohol

“11.1 For greater certainty,

“(a) a person who, or a diplomatic mission, consular post, accredited mission or office of a political subdivision of a foreign state that, has privileges and immunities that are comparable to the privileges and immunities accorded under article 36 of the Vienna Convention on Diplomatic Relations or article 50 of the Vienna Convention on Consular Relations may, despite any provision of the *Importation of Intoxicating Liquors Act*, exercise those privileges and benefit from those immunities in respect of alcohol imported for their personal consumption or official use, as the case may be; and

“(b) an international organization that has privileges and immunities that are comparable to the privileges and immunities accorded under section 7 of article II of the Convention on the Privileges and Immunities of the United Nations may, despite any provision of the *Importation of Intoxicating Liquors Act*, exercise those privileges and benefit from those immunities in respect of alcohol imported for its official use.”

7. The heading before section 12 of the Act is replaced by the following:

“Regulations and orders”

8. Section 13 of the Act is amended by adding the following after subsection (2):

Amendment to Schedule IV

“(3) For the purpose of paragraph 5 (1) (h.1), the Governor in Council may, by order, add to or delete from Schedule IV a reference to a treaty, convention or agreement, or amend a reference in that Schedule.”

9. The Act is amended by adding, after Schedule III, the schedule set out in the schedule to this Act.

COORDINATING AMENDMENT

Bill C-11

10. If Bill C-11, introduced in the first session of the 37th Parliament and entitled the *Immigration and Refugee Protection Act* (“the other Act”), receives royal assent, then, on the later of the coming into force of

- (a) this Act, and
 - (b) the first of sections 33 to 43 of the other Act to come into force,
- subsection 5 (4) of the Foreign Missions and International Organizations Act is replaced by the following:

Immigration restrictions

“(4) In the event of an inconsistency or conflict between an order made under subsection (1) and any of sections 33 to 43 of the *Immigration and Refugee Protection Act*, the order prevails to the extent of the inconsistency or conflict.”

SCHEDULE

(Section 9)

Schedule IV

(Paragraph 5 (1) (h.1) and subsection 13 (3))

DESIGNATED TREATIES, CONVENTIONS AND AGREEMENTS

Agreement with the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

Published under the authority of the Speaker of the House of Commons

Available from:

Public Works and Government Services Canada—Publishing,
Ottawa, Canada K1A 0S9

3. Republic of Colombia

FOUR COMMUNICATIONS FROM THE OFFICE OF PROTOCOL UNDER THE MINISTRY OF FOREIGN AFFAIRS CONCERNING DIPLOMATIC MISSIONS, INTERNATIONAL AGENCIES OR THE UNITED NATIONS SYSTEM'S OFFICES LOCATED IN COLOMBIA

I

Bogotá, 27 March 2002

The Office of Protocol under the Ministry of Foreign Affairs has the honour to inform the diplomatic missions and international agencies in Bogotá that this Office and the Value-Added Tax Division of the National Tax and Customs Office have agreed that, as from 15 April 2002, requests for refund of the value-added tax (VAT) must meet the following criteria:

1. Applications for refund of the VAT must include the original invoices, duly numbered, which will be returned to the diplomatic mission once the process has been completed;
2. The invoices attached to the application must be made out in the name of the staff member entitled to the exemption or to members of his or her family who are accredited with this Office;
3. Cash register receipts issued by supermarkets or grocery stores shall be accepted only where accompanied by the corresponding itemized receipt issued by the supermarket or grocery store in question;
4. Application for refund of the VAT on locally purchased vehicles must attach a certificate issued by the Office of Protocol;
5. It is recommended that invoices should be submitted within two months of purchase.

Diplomatic missions and international agencies
Bogotá

II

Bogotá, 19 June 2002

Sir,

I have the honour to refer you to your Communication No. 2140 of 28 September 2001 concerning accreditation of internationally recruited staff of agencies of the United Nations system with offices in Colombia.

Mr. Cesar Miquel
Resident Representative
United Nations Development Programme (UNDP)
Bogotá

The Office of Protocol has completed its consideration of this document and of the study carried out jointly with your Office at a meeting held on 12 March 2002 and has reached the following conclusions.

Accreditation and privileges

Generally speaking, the Office's criteria for the accreditation of internationally recruited staff of the United Nations system shall continue to be governed by the provisions of the 1946 Convention on the Privileges and Immunities of the United Nations and of the various headquarters agreements signed by Colombia; by the relevant domestic legislation; and by the principles and practice followed by the Ministry of Foreign Affairs in matters relating to privileges and immunities, which are described below.

In considering and establishing the level of accreditation, and hence the privileges to which the new staff member is entitled, the Office of Protocol shall bear in mind the scale established in Appendix A to the United Nations Staff Rules. In each case, this Office shall therefore be notified of the category of this scale into which the accredited staff member falls.

The Office of Protocol shall be notified, through transmission of the relevant information (Form No. DP-002), of the names of persons who, under special agreements concluded with the Government of Colombia, have been appointed by the Secretary-General of the United Nations as his special representatives or advisers or their deputies. Any relevant information on the permanent or occasional presence of such persons in Colombia during the performance of their duties shall also be provided.

Staff members appointed to the post of resident representative, system coordinator, representative, head of mission or director, depending on the title established by the official in charge of the United Nations programme, body or agency, shall continue to be accredited in the diplomatic category equivalent to that of Ambassador and may avail themselves of the duty-free import entitlement established in article 6 (a) of Decree No. 2148 (1991). They shall be entitled to a diplomatic identity card (with a red border), driving licence and special CD licence plates.

Staff members serving as deputy to the primary representative of a programme, body or agency of the United Nations system in a category equal to or higher than P-4 and United Nations staff members in the same category shall be accredited in the diplomatic category equivalent to that of the members of diplomatic missions for purposes of entitlement to the duty-free import entitlement established in article 6 (b) of Decree No. 2148 (1991). They shall be entitled to an identity card (with a yellow border), driving licence and special OI licence plates.

Internationally recruited staff members and experts of the United Nations system in a category lower than P-4 shall be accredited in the category equivalent to that of administrative staff and shall be entitled only to

the duty-free import entitlement established in article 6 (c) of Decree No. 2148 (1991). They shall be entitled to an identity card (yellow border) and special OI licence plates.

Experts working with United Nations Volunteers with initial contracts of at least two years' duration shall be accredited as administrative staff and shall enjoy the rights established for that category.

Internationally recruited staff members of United Nations Volunteers with contracts of between one (1) and two (2) years' duration shall receive an identification card issued by the Ministry and shall be entitled to duty-free import of their household effects.

Internationally recruited staff members of the United Nations system who enter the country for postings of up to one (1) year's duration shall be granted temporary accreditation and shall be entitled only to an identity card issued by the Office of Protocol. The renewal of a one-year contract shall not change the staff member's accreditation status (temporary), nor shall it give rise to the right to duty-free import of goods.

The Office of Protocol shall accept registration of the following persons as family members of a United Nations system staff member or expert:

(a) The spouse and immediate family habitually resident with and financially dependent on the accredited person;

(b) The accredited person's domestic partner, upon presentation of a document certifying that the consensual union between a man and a woman has been previously registered and recognized in their respective countries of origin. This requirement must be met:

—At the time of application for a visa while outside Colombia; or

—At the time when the Ministry is notified that the staff member or expert has begun work and when the relevant documents are requested in cases where, under a relevant agreement, the said staff member or expert and/or his or her domestic partner do not require a visa for entry into Colombia.

This Office should be consulted with due notice regarding any case not covered by sections (a) and (b) above.

The Office of Protocol shall issue an identity card to foreign nationals who enter Colombia in the domestic service of a staff member or expert, subject to their prior registration (Form DP-003) and submission of copies of the individual's passport and employment contract.

The Office of Protocol shall approve reaccreditation of a staff member or expert who, within a short period of time, is reassigned to another programme, body or agency of the United Nations system with an office in Colombia only where the posting occurs within six (6) months of the date of termination of the previous posting and where it can be demonstrated

that the person in question has left Colombia by reason of such termination and has remained abroad for a continuous 60-day period.

Staff members or experts in this situation shall be authorized to:

- (a) Import their household effects duty-free; and
- (b) Import an automobile duty-free unless they availed themselves of this entitlement during their previous posting.

Internationally recruited staff members and experts of the United Nations system who are Colombian nationals or residents shall be accredited through the usual procedures and documents, provided that they are assigned to serve as the legal representatives of a programme, body or agency of that system. Other Colombian nationals and residents may be recorded in the database; however, for all civil procedures, they must provide proof of their Colombian citizenship or residence, as appropriate. Neither of these categories of staff shall be entitled to privileges.

The rights of staff members of the United Nations system who are Colombian nationals, upon their permanent return to Colombia, are set forth in article 11 of Decree No. 2148 (1991) as amended by Decree No. 379 (1993).

Official licence plates

In the case of official vehicles owned by a programme, body or agency of the United Nations system, both the holders of existing plates and those who register with the Office of Protocol in the future will be issued new plates, following a procedure based on article 5 (3) of Decree No. 2148 (1991): CD plates for one (1) official vehicle and OI plates for any additional official vehicles.

In due course, each head of mission shall inform the Office of Protocol of the official vehicle on which the CD plates have been placed.

Immunities

While in Colombia, staff members and experts of the United Nations system shall enjoy the immunities established in the 1946 Convention on the Privileges and Immunities of the United Nations and in the various headquarters agreements.

Important note

Procedures established in this document which in any way differ from former practice shall be implemented as from the fifth working day following delivery of the document to its recipient; however, at no time shall they have retroactive effect with respect to the category of accreditation of staff members or experts of the United Nations system who are currently serving in Colombia.

Lastly, this Office requests the Honourable Representative of the United Nations Development Programme (UNDP) to bring the aforemen-

tioned regulations to the attention of the Resident Coordinator and of the bodies and agencies of the United Nations system with offices in Colombia so that they may comply with them.

(Signed) Carlos Alberto BERNAL ROMAN
Director, Office of Protocol

III

Bogotá, 5 August 2002

Sir,

I have the honour to refer to your letter No. ADM/250/32 of 24 June 2002 concerning the duty-free import entitlements of internationally recruited staff of the United Nations system who are posted to Colombia for periods of one (1) year.

With regard to the hiring procedure followed by the United Nations system and mentioned in that letter, this Office has reconsidered the point at issue and has concluded that:

1. The above-mentioned staff members shall enjoy the rights (with respect to their furniture, household effects and personal baggage) established in article V, section 18 (g), and article VI, section 22 (f), of the 1946 Convention on the Privileges and Immunities of the United Nations, adopted by Colombia through Act No. 62 (1973). Application for this type of duty-free import entitlement, referred to as “installation” in article 1 of Decree No. 2148 (1991), must be made during the first year following the date of the beneficiary’s accreditation in Colombia, a date to which this Office has made explicit reference in its letters on the matter.

2. The duty-free import of one vehicle may also be authorized during the first year following the date of the beneficiary’s accreditation. In no case shall this duty-free installation entitlement be granted after the expiration of that time period.

3. The amount and conditions of the duty-free entitlements, which include household effects and a vehicle, shall remain subject to the category of accreditation (diplomatic or administrative) in accordance with the equivalencies established by this Office in its Letter No. PR/CPV 23163

Mr. Cesar Miquel
Resident Representative
United Nations Development Programme (UNDP)
Bogotá

of 19 June 2002 and with the beneficiary's category in the United Nations scale, of which the Office of Protocol must in each case be informed.

4. This Office must be informed in due course of contract expirations and renewals; in the latter case, it must be borne in mind that service must be continuous under article 13 of Decree No. 2148 (1991) and, in particular, subparagraph (a) thereof, where applicable.

The foregoing shall constitute an amendment to the second paragraph on page 3 of Letter No. PR/CPV 23163 of 19 June 2002, only insofar as the latter refers to internationally recruited staff with postings of one (1) year's duration.

As on the previous occasion, this Office requests your Office to bring the aforementioned regulations to the attention of the Resident Coordinator and of the bodies and agencies of the United Nations system with offices in Colombia so that they may comply with them.

(Signed) Carlos Alberto BERNAL ROMAN
Director, Office of Protocol

IV

Bogotá, 5 September 2002

The Office of Protocol under the Ministry of Foreign Affairs has the honour to inform the diplomatic missions and international agencies in Bogotá that this Office and the Legal Department of the National Tax and Customs Office have been obliged to consider the applicability of the diplomatic duty-free import entitlement established in Decree No. 2148 (1991) concerning the import of merchandise for the use of Colombian Government agencies involved in cooperation projects. Having concluded its analysis, the Office of Protocol under the Ministry of Foreign Affairs wishes to inform you of the following:

1. Diplomatic missions may not interpret the concept of the diplomatic duty-free entitlement in a manner different from that of the Government of Colombia at the time of issuance of its Decree No. 2148 (1991); in other words, this entitlement is limited to the import of goods intended for the limited consumption by or use of the diplomatic mission or for the consumption by or use of the accredited staff of such missions and members of their families who are so entitled.

Diplomatic missions and international bodies
Bogotá

2. Diplomatic missions should bear in mind that transfer of the diplomatic duty-free entitlement is expressly prohibited and that it is therefore illegal to extend that benefit to other merchandise imported under and for the implementation of cooperation agreements concluded with national or municipal bodies and for the use of persons who are neither the internationally recruited staff beneficiaries mentioned in article 3 of Decree No. 2148 (1991) nor the offices of the missions which are beneficiaries under article 5 of that Decree.

3. Diplomatic missions which, in connection with the implementation of cooperation agreements, import goods into Colombia for the use of national or municipal government agencies should require those agencies to seek appropriate guidance from the National Tax and Customs Office or from experts in customs matters in order to avoid engaging in practices which violate Colombian tax law.

4. The Office of Protocol will also reject applications for import under the diplomatic duty-free entitlement of goods or merchandise which are intended for the use of or consumption by parties not covered thereby or which clearly do not fall within the mission's normal functions.

Chapter II

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

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

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

The following State acceded to the Convention in 2002:²

<i>State</i>	<i>Date of receipt of instrument of accession</i>
South Africa	30 August 2002

This brought the number of States parties to the Convention as at 31 December 2002 to 146.³

2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

- (a) Exchange of letters between the United Nations Office at Geneva and the Government of the United Kingdom constituting an agreement regarding arrangements for the Ninth Conference on Urban and Regional Research of the Economic Commission for Europe, to be held at Leeds from 9 to 12 June 2002. Signed at Geneva on 23 November 2001 and 9 January 2002⁴

23 November 2001

Sir,

I have the honour to give you below the text of arrangements between the United Nations and the Government of the United Kingdom (hereinafter referred to as "the Government") in connection with the Ninth Conference on Urban and Regional Research, of the Economic Commission for Europe, to be held, at the invitation of the Government, in Leeds, from 9 to 12 June 2002.

"Arrangements between the United Nations and the Government of the United Kingdom regarding the Ninth Conference on Urban and Regional Research of the Economic Commission for Europe, to be held in Leeds from 9 to 12 June 2002

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

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

(a) To supply to the United Nations/Economic Commission for Europe staff member who is to be brought to Leeds, an air ticket, economy class, Geneva-London-Geneva, to be used on the airlines that cover this itinerary, and onward travel to Leeds;

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

(c) To pay to the staff member, on arrival in the United Kingdom, 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 Conference, together with terminal expenses of up to 120 United States dollars in convertible currency, provided that the traveller submits proof of having incurred such expenses.

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

"4. Being a Conference convened by the United Nations, the Convention of 13 February 1946 on the Privileges and Immunities

of the United Nations, to which the United Kingdom is a party, will apply, as appropriate, to persons attending the Conference. In particular:

(a) The representatives of States Members of the United Nations will enjoy the privileges and immunities provided under article IV of the Convention. Officials of the United Nations performing functions in connection with the Conference will enjoy the privileges and immunities provided under articles V and VII of the Convention. Representatives of States not Members of the United Nations, invited by the Executive Secretary of the Economic Commission for Europe according to paragraph 1 of these arrangements who are designated by the Secretary-General as experts on mission for the United Nations, following consultations between the Government and the Executive Secretary of the Economic Commission for Europe, will enjoy the privileges and immunities provided under article VI of the Convention;

(b) Officials of the specialized agencies participating in the Conference will enjoy the privileges and immunities provided under article VI of the Convention;

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

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

“5. The Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury to persons or damage to or loss of property in conference or office premises provided for the Conference; (ii) injury to persons or damage to or loss of property caused by, or incurred by using, the transport services that are provided by or under the control of the Government; and (iii) the employment for the Conference of personnel provided or arranged by the Government; and the Government will hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

“6. Any controversy or dispute arising out of these arrangements shall be settled by negotiation between the parties. Each party

shall give full and sympathetic consideration to any proposal advanced by the other with a view to settling amicably the controversy or dispute. In the event the parties fail to settle their dispute by negotiation, the parties should explore in good faith other means with a view to settling the controversy or dispute.”

I have the honour to propose that this letter and your affirmative answer will constitute an understanding between the United Nations and the Government of the United Kingdom which will come into effect on the date of your reply and will remain in operation for the duration of the Conference and for such additional period as is necessary for its preparation and winding up.

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

II

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

9 January 2002

Sir,

1. Thank you for your letter of 23 November 2001, which set out the text of arrangements between the United Nations and the Government of the United Kingdom (the Government) regarding the Ninth Conference on Urban and Regional Research of the United Nations Economic Commission for Europe, to be held in Leeds from 9 to 12 June 2002. In response to your letter, the Government makes the following points:

“Arrangements between the United Nations and the Government of the United Kingdom regarding the Ninth Conference on Urban and Regional Research of the Economic Commission for Europe, to be held in Leeds from 9 to 12 June 2002

“The Government agrees to the arrangements as set out in the letter from the Director-General dated 23 November 2001. In particular, the Government confirms that:

- Adequate conference facilities and personnel, as described in paragraph 3 of the Director-General’s letter and the attached annex, will be provided;
- Responsibility for the supplementary expenses for the United Nations/Economic Commission for Europe staff member, set out in paragraph 2 of the Director-General’s letter, will be assumed by the Government;

- The Convention on the Privileges and Immunities of the United Nations of 1946 will apply to persons attending the conference, and in particular the points highlighted in paragraph 4 of the Director-General’s letter; and
- Responsibility for dealing with any action, claim or other demand against the United Nations as set out in paragraph 5 of the Director-General’s letter, and for settling any controversy or dispute through negotiation between the parties (paragraph 6 of the Director-General’s letter), will rest with the Government.”

2. The Government is looking forward to hosting this conference in Leeds next year. Good progress is being made in planning the event. A conference venue has been booked in Leeds and conference organizers have been appointed to manage the event on behalf of the Government. Your letter of 23 November 2001 and this reply constitute an understanding between the United Nations and the Government of the United Kingdom. This understanding comes into effect from the date of this letter and remains in operation for the duration of the conference and for such additional period as is necessary for its preparation and conclusion.

(Signed) Simon W. J. FULLER
Ambassador

- (b) Agreement between the United Nations and the Government of Mexico regarding the arrangements for the International Conference on Financing for Development, to be held at Monterrey, Mexico, from 18 to 22 March 2002. Signed at New York on 25 January 2002⁵

Whereas the General Assembly of the United Nations in its resolution 55/245 A of 21 March 2001, decided to convene an international conference on financing for development, to be held at the highest political level, including at the summit level (hereinafter referred to as “the Conference”) in 2002;

Whereas the General Assembly of the United Nations, in the same resolution, accepted with appreciation the offer of the Government of Mexico (hereinafter referred to as “the Government”) to act as host of the International Conference on Financing for Development and decided that the Conference would be held in Mexico;

Whereas in the same resolution the General Assembly welcomed the continuous and important progress made in consultations with major institutional stakeholders, in particular the World Bank, the International Monetary Fund and the World Trade Organization, with regard to their involvement in the process of financing for development;

Whereas the General Assembly, in its resolution 55/245 B of 25 July 2001, decided that the Conference would take place in Monterrey, capital of the State of Nuevo León, Mexico, from 18 to 22 March 2002;

Whereas the International Conference on Financing for Development has as its objectives mobilizing domestic financial resources for development; enhancing foreign direct investment and other private flows; enhancing trade for financing development; increasing international financial cooperation for development through the enhancement, inter alia, of official development assistance, and addressing systemic issues, including enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development;

Whereas the General Assembly, in the same resolution, decided that the Conference shall include the participation of States Members of the United Nations and States members of the specialized agencies and observers in accordance with the established practice of the General Assembly, and further decided that the Conference shall also include the participation of all relevant stakeholders, including the business sector and civil society;

Whereas the General Assembly decided in section I, paragraph 5, of resolution 40/243 of 18 December 1985 and reaffirmed in section A, paragraph 17, of resolution 47/202 of 22 December 1992 that United Nations bodies might hold sessions away from their established headquarters when a Government issuing an invitation for a session to be held within its territory has agreed to defray the actual additional costs directly or indirectly involved, after consultation with the Secretary-General as to their nature and possible extent;

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

Article I

VENUE OF THE CONFERENCE

The Conference shall be held in Monterrey, Mexico, at the Cintermex Facility, from 18 to 22 March 2002.

Article II

PARTICIPATION IN THE CONFERENCE

1. Participation in the Conference shall be open to the following:
 - (a) All States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency;
 - (b) Representatives of organizations that have received a standing invitation from the General Assembly to participate as observers in the sessions and work of all international conferences convened under the auspices of the General Assembly, in accordance with Assembly resolutions 3237 (XXIX) of 22 November 1974 and 43/177 of 15 December 1988;

- (c) Representatives of the interested organs of the United Nations;
- (d) Representatives of the specialized and related agencies of the United Nations;
- (e) Representatives of the World Bank, the International Monetary Fund and the World Trade Organization;
- (f) Representatives from other relevant intergovernmental organizations;
- (g) Representatives from relevant non-governmental organizations accredited to the Conference;
- (h) Observers from relevant business sector organizations accredited to the Conference;
- (i) Officials of the United Nations;
- (j) Other persons invited by the Preparatory Committee for the Conference or by the Secretary-General of the United Nations.

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

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

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide, at its own expense, for as long as required for the Conference, the necessary premises, including conference rooms for informal meetings, office space, working areas and other related facilities, as specified in annex III to this Agreement.⁶

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

3. The Government shall, at its own expense, furnish, equip and maintain in good repair all the aforesaid rooms and facilities in a manner the United Nations considers adequate for the effective conduct of the Conference. The conference rooms shall be equipped for reciprocal simultaneous interpretation in the six languages of the United Nations and shall have facilities for sound recordings in those languages, in accordance with annex III.

4. The Government shall, at its own expense, furnish, equip and maintain such equipment as word processors and typewriters with key-boards in the languages needed, dictating, transcribing, reproduction and

such other equipment and office supplies as are necessary for the effective conduct of the Conference and/or use by the press representatives covering the Conference.

5. The Government shall install, at its own expense, within the Conference area, a registration desk, restaurant facilities, a bank, a post office, telephone, Internet and e-mail facilities, telefax and telex facilities, information and travel facilities, as well as a secretarial service centre, equipped in consultation with the United Nations, for the use of delegations to the Conference on a commercial basis.

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

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

8. The Government shall bear the cost of all necessary utility services, including local telephone communications, of the secretariat of the Conference and its communications by telephone, telefax, telex and electronic communications system (inclusive of e-mail and Internet) between the secretariat of the Conference and United Nations offices when such communications are made or authorized by, or on behalf of, the secretariat of the Conference, including official United Nations information cables between the Conference site and United Nations Headquarters, and the various United Nations information centres.

9. The Government shall bear the reasonable cost of the transport and insurance charges, from any established United Nations Office to the site of the Conference and return, of all United Nations equipment and supplies required for the functioning of the Conference which are not provided locally by the Government. The United Nations shall determine the mode of shipment of such equipment and supplies, in consultation with the Government.

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

Article IV

MEDICAL FACILITIES

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

2. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital. The Government shall not be responsible for medical costs.

Article V

ACCOMMODATION

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

Article VI

TRANSPORT

1. The Government shall endeavour to ensure that adequate transportation by air is available at reasonable commercial rates for persons participating in or attending the Conference.

2. The Government shall provide transport between the airport and the Conference premises and principal hotels for the members of the United Nations Secretariat servicing the Conference upon their arrival or departure.

3. The Government shall ensure the availability of transportation for all participants to and from the airport for three days before and two days after the Conference as well as the Conference premises for the duration of the Conference.

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

Article VII

POLICE PROTECTION

The Government shall furnish, at its own expense, such police protection as is 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 security officer provided by the Government, this officer shall work in close cooperation with a designated senior security official of the United Nations.

Article VIII

LOCAL PERSONNEL FOR THE CONFERENCE

1. The Government shall appoint an official who shall act as a liaison officer between the Government and the United Nations and shall be

responsible, in consultation with the Secretary-General of the Conference, for making the necessary arrangements for the Conference as required under this Agreement.

2. The Government shall engage and provide, at its own expense, the local personnel required in addition to the United Nations staff, as specified in annex V to this Agreement.

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

Article IX

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial responsibility provided for elsewhere in this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the Conference in Mexico rather than at established United Nations Headquarters (New York). Such additional costs, which are provisionally estimated at US\$ 1,304,234, shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the Secretary-General to undertake preparatory visits to Mexico and to attend the Conference, as well as the costs of shipment of equipment and supplies not available locally. Arrangements for such travel and shipment shall be made by the secretariat of the Conference in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices in regard to travel standards, baggage allowances, subsistence payments (per diem) and terminal expenses. The list of United Nations officials needed to service the Conference and the related travel costs are provided in annexes I and II.

2. The Government shall, no later than 15 February 2002, deposit with the United Nations the sum of US\$ 1,304,234 representing the total estimated costs referred to in paragraph 1 of this article.

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

4. The deposit referred to in paragraph 2 of this article shall be used only to pay the obligations of the United Nations in respect of the Conference.

5. After the conclusion of the Conference, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs paid by the United Nations and to be borne by the Government

pursuant to paragraph 1 of this article. These costs shall be expressed in United States dollars, using the United Nations official rate of exchange at the time the United Nations paid the cost. The United Nations, on the basis of this detailed set of accounts, shall refund to the Government any funds unspent out of the deposit or advance referred to in paragraph 2 of this article within one month of the receipt of the detailed accounts. Should the actual additional costs exceed the deposit, the Government will remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts will be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustment of accounts will be subject to any observations which may arise from the audit carried out by the United Nations Board of Auditors, whose determination shall be accepted as final by both the United Nations and the Government.

Article X

LIABILITY

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

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

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

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

2. The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand, unless such damage, injury or loss results from gross negligence or wilful misconduct attributable to the United Nations or any of its personnel.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which Mexico is a party, shall be applicable, *mutatis mutandis*, in respect of the Conference; in particular, the representatives of States referred to in article II, paragraph 1 (a) above, shall enjoy the privileges and immunities provided under article IV of the Convention; the officials of the United Nations performing functions in connection with the Conference referred to in article II, paragraphs 1 (i) and 2 above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention; and any experts on mission for the United Nations in con-

nection with the Conference shall enjoy the privileges and immunities provided under articles VI and VII of the Convention. The participants referred to in article II, paragraph 1 (b), (c), (f), (g) and (h) above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Conference.

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

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

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

5. All persons referred to in article II above shall have the right of entry into and exit from Mexico and no impediment shall be imposed on their transit to and from the Conference area. Visas and entry permits, where required, shall be granted as speedily as possible in accordance with government regulations and established United Nations practice.

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

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

Article XII

IMPORT DUTIES AND TAX

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

ing representatives of information media, and shall waive import duties and taxes on supplies necessary for the Conference. It shall issue, without undue delay, to the United Nations any necessary import and export permits for this purpose. Any such equipment shall be re-exported after the conclusion of the Conference, unless alternative arrangements have been made with the agreement of the Government.

Article XIII

SETTLEMENT OF DISPUTES

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

Article XIV

FINAL PROVISIONS

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

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

SIGNED at New York this 25th day of January 2002 in Spanish and English, both texts being equally authentic.

For the United Nations:
[Signature]
Nitin DESAI
*Under-Secretary-General
for Economic and Social Affairs*

For the Government of Mexico:
[Signature]
Miguel HAKIM SIMON
*Under-Secretary for
Economic Relations and
International Cooperation
Ministry for Foreign Affairs*

(c) Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone. Signed on 16 January 2002⁷

Whereas the Security Council, in its resolution 1315 (2000) of 14 August 2000, expressed deep concern at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity;

Whereas, in the said resolution, the Security Council requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law;

Whereas the Secretary-General of the United Nations (hereinafter “the Secretary-General”) and the Government of Sierra Leone (hereinafter “the Government”) have held such negotiations for the establishment of a special court for Sierra Leone (hereinafter “the Special Court”);

Now, therefore, the United Nations and the Government of Sierra Leone have agreed as follows:

Article 1

ESTABLISHMENT OF THE SPECIAL COURT

1. There is hereby established the Special Court for Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

2. The Special Court shall function in accordance with the Statute of the Special Court for Sierra Leone. The Statute is annexed to this Agreement and forms an integral part thereof.

Article 2

COMPOSITION OF THE SPECIAL COURT

AND APPOINTMENT OF JUDGES

1. The Special Court shall be composed of a Trial Chamber and an Appeals Chamber with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Court, the Secretary-General, the Prosecutor or the President of the Special Court so request. Up to two alternate judges shall similarly be appointed after six months if the President of the Special Court so determines.

2. The Chambers shall be composed of no fewer than eight independent judges and no more than eleven such judges who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber where one shall be appointed by the Government of Sierra Leone and two judges appointed by the Secretary-General, upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General;

(b) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (a) above;

(c) Five judges shall serve in the Appeals Chamber, of whom two shall be appointed by the Government of Sierra Leone and three judges shall be appointed by the Secretary-General upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General.

3. The Government of Sierra Leone and the Secretary-General shall consult on the appointment of judges.

4. Judges shall be appointed for a three-year term and shall be eligible for reappointment.

5. If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 3

APPOINTMENT OF A PROSECUTOR AND A DEPUTY PROSECUTOR

1. The Secretary-General, after consultation with the Government of Sierra Leone, shall appoint a Prosecutor for a three-year term. The Prosecutor shall be eligible for reappointment.

2. The Government of Sierra Leone, in consultation with the Secretary-General and the Prosecutor, shall appoint a Sierra Leonean Deputy Prosecutor to assist the Prosecutor in the conduct of the investigations and prosecutions.

3. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. The Prosecutor shall be assisted by such Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

Article 4

APPOINTMENT OF A REGISTRAR

1. The Secretary-General, in consultation with the President of the Special Court, shall appoint a Registrar who shall be responsible for the servicing of the Chambers and the Office of the Prosecutor, and for the recruitment and administration of all support staff. He or she shall also administer the financial and staff resources of the Special Court.

2. The Registrar shall be a staff member of the United Nations. He or she shall serve a three-year term and shall be eligible for reappointment.

Article 5

PREMISES

The Government shall assist in the provision of premises for the Special Court and such utilities, facilities and other services as may be necessary for its operation.

Article 6

EXPENSES OF THE SPECIAL COURT

The expenses of the Court shall be borne by voluntary contributions from the international community. It is understood that the Secretary-General will commence the process of establishing the Court when he has sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Court's operation. It is further understood that the Secretary-General will continue to seek contributions equal to the anticipated expenses of the Court beyond its first three years of operation. Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Court.

Article 7

MANAGEMENT COMMITTEE

It is the understanding of the Parties that interested States may wish to establish a management committee to assist the Special Court in obtaining adequate funding, provide advice on matters of Court administration and be available as appropriate to consult on other non-judicial matters. The Management Committee will include representatives of interested States that contribute voluntarily to the Special Court, as well as representatives of the Government of Sierra Leone and the Secretary-General.

Article 8

INVIOIABILITY OF PREMISES, ARCHIVES AND ALL OTHER DOCUMENTS

The premises of the Special Court shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Special Court shall not be dispossessed of all or any part of the premises of the Court without its express consent.

The property, funds and assets of the Special Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

The archives of the Court, 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 9

FUNDS, ASSETS AND OTHER PROPERTY

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

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

(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 Sierra Leone, to the United Nations or any other agency.

Article 10

SEAT OF THE SPECIAL COURT

The Special Court shall have its seat in Sierra Leone. The Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and may be relocated outside Sierra Leone, if circumstances so require, and subject to the conclusion of a Headquarters Agreement between the Secretary-General of the United Nations and the Government of Sierra Leone, on the one hand, and the Government of the alternative seat, on the other.

Article 11

JURIDICAL CAPACITY

The Special Court shall possess the juridical capacity necessary to:

- (a) Contract;
- (b) Acquire and dispose of movable and immovable property;
- (c) Institute legal proceedings;
- (d) Enter into agreements with States as may be necessary for the exercise of its functions and for the operation of the Court.

Article 12

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

1. The judges, the Prosecutor and the Registrar, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, enjoy:

- (a) Personal inviolability, including immunity from arrest or detention;
- (b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;
- (c) Inviolability for all papers and documents;
- (d) Exemption, as appropriate, from immigration restrictions and other alien registrations;
- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents by the Vienna Convention;
- (f) Exemption from taxation in Sierra Leone on their salaries, emoluments and allowances.

2. Privileges and immunities are accorded to the judges, the Prosecutor and the Registrar in the interest of the Special Court and not for the personal benefit of the individuals themselves. The right and the duty to waive the immunity, in any case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General, in consultation with the President.

Article 13

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL AND SIERRA LEONEAN PERSONNEL

1. Sierra Leonean and international personnel of the Special Court shall be accorded:

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

(b) Immunity from taxation on salaries, allowances and emoluments paid to them.

2. International personnel shall, in addition thereto, be accorded:

(a) Immunity from immigration restriction;

(b) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Sierra Leone.

3. The privileges and immunities are granted to the officials of the Special Court in the interest of the Court and not for their personal benefit. The right and the duty to waive the immunity in any particular case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Registrar of the Court.

Article 14

COUNSEL

1. The Government shall ensure that the counsel of a suspect or an accused who has been admitted as such by the Special Court shall not be subjected to any measure which may affect the free and independent exercise of his or her functions.

2. In particular, the counsel shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of personal baggage;

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

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

(d) Immunity from any immigration restrictions during his or her stay as well as during his or her journey to the Court and back.

Article 15

WITNESSES AND EXPERTS

Witnesses and experts appearing from outside Sierra Leone on a summons or a request of the judges or the Prosecutor shall not be prosecuted, detained or subjected to any restriction on their liberty by the Sierra Leonean authorities. They shall not be subjected to any measure which may

affect the free and independent exercise of their functions. The provisions of article 14, paragraph 2 (a) and (d), shall apply to them.

Article 16

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

Recognizing the responsibility of the Government under international law to ensure the security, safety and protection of persons referred to in this Agreement and its present incapacity to do so pending the restructuring and rebuilding of its security forces, it is agreed that the United Nations Mission in Sierra Leone shall provide the necessary security to premises and personnel of the Special Court, subject to an appropriate mandate by the Security Council and within its capabilities.

Article 17

COOPERATION WITH THE SPECIAL COURT

1. The Government shall cooperate with all organs of the Special Court at all stages of the proceedings. It shall, in particular, facilitate access to the Prosecutor to sites, persons and relevant documents required for the investigation.

2. The Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to:

- (a) Identification and location of persons;
- (b) Service of documents;
- (c) Arrest or detention of persons;
- (d) Transfer of an indictee to the Court.

Article 18

WORKING LANGUAGE

The official working language of the Special Court shall be English.

Article 19

PRACTICAL ARRANGEMENTS

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Special Court, a phased-in approach shall be adopted for its establishment in accordance with the chronological order of the legal process.

2. In the first phase of the operation of the Special Court, judges, the Prosecutor and the Registrar will be appointed along with investigative and prosecutorial staff. The process of investigations and prosecutions of those already in custody shall be initiated.

3. In the initial phase, judges of the Trial Chamber and the Appeals Chamber shall be convened on an ad hoc basis for dealing with organizational matters, and serving, when required to perform their duties.

4. Judges of the Trial Chamber shall take permanent office shortly before the investigation process has been completed. Judges of the Appeals Chamber shall take permanent office when the first trial process has been completed.

Article 20

SETTLEMENT OF DISPUTES

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation, or by any other mutually agreed-upon mode of settlement.

Article 21

ENTRY INTO FORCE

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

Article 22

AMENDMENT

This Agreement may be amended by written agreement between the Parties.

Article 23

TERMINATION

This Agreement shall be terminated by agreement of the Parties upon completion of the judicial activities of the Special Court.

IN WITNESS THEREOF, the following duly authorized representatives of the United Nations and of the Government of Sierra Leone have signed this Agreement.

DONE at Freetown, on 16 January 2002 in two originals in the English language.

For the United Nations:
[Signature]
Hans CORELL

For the Government of Sierra Leone:
[Signature]
Solomon E. BEREWA

Statute of the Special Court for Sierra Leone

Having been established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone (hereinafter “the Special Court”) shall function in accordance with the provisions of the present Statute.

Article 1

COMPETENCE OF THE SPECIAL COURT

1. The Special Court shall, except as provided in paragraph 2, have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

2. Any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending State.

3. In the event the sending State is unwilling or unable genuinely to carry out an investigation or prosecution, the Court may, if authorized by the Security Council on the proposal of any State, exercise jurisdiction over such persons.

Article 2

CRIMES AGAINST HUMANITY

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
- (h) Persecution on political, racial, ethnic or religious grounds;
- (i) Other inhumane acts.

Article 3

VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the protection of war victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:

- (a) Violence to the life, health, and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

Article 4

OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

- (a) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (b) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (c) Conscripting or enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities.

Article 5

CRIMES UNDER SIERRA LEONEAN LAW

The Special Court shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law:

- (a) Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31):
 - (i) Abusing a girl under 13 years of age, contrary to section 6;
 - (ii) Abusing a girl between 13 and 14 years of age, contrary to section 7;
 - (iii) Abduction of a girl for immoral purposes, contrary to section 12;
- (b) Offences relating to the wanton destruction of property under the Malicious Damage Act, 1861:
 - (i) Setting fire to dwelling-houses, any person being therein, contrary to section 2;
 - (ii) Setting fire to public buildings, contrary to sections 5 and 6;
 - (iii) Setting fire to other buildings, contrary to section 6.

Article 6

INDIVIDUAL CRIMINAL RESPONSIBILITY

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.

2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal

responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.

5. Individual criminal responsibility for the crimes referred to in article 5 shall be determined in accordance with the respective laws of Sierra Leone.

Article 7

JURISDICTION OVER PERSONS OF OVER 15 YEARS OF AGE

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care, guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

Article 8

CONCURRENT JURISDICTION

1. The Special Court and the national courts of Sierra Leone shall have concurrent jurisdiction.

2. The Special Court shall have primacy over the national courts of Sierra Leone. At any stage of the procedure, the Special Court may formally request a national court to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence.

Article 9

NON BIS IN IDEM

1. No person shall be tried before a national court of Sierra Leone for acts for which he or she has already been tried by the Special Court.

2. A person who has been tried by a national court for the acts referred to in articles 2 to 4 of the present Statute may be subsequently tried by the Special Court if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Special Court shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

AMNESTY

An amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in articles 2 to 4 of the present Statute shall not be a bar to prosecution.

Article 11

ORGANIZATION OF THE SPECIAL COURT

The Special Court shall consist of the following organs:

- (a) The Chambers, comprising one or more Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor; and
- (c) The Registry.

Article 12

COMPOSITION OF THE CHAMBERS

1. The Chambers shall be composed of not less than eight or more than 11 independent judges, who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber, of whom one shall be a judge appointed by the Government of Sierra Leone, and two judges appointed by the Secretary-General of the United Nations (hereinafter “the Secretary-General”);

(b) Five judges shall serve in the Appeals Chamber, of whom two shall be judges appointed by the Government of Sierra Leone, and three judges appointed by the Secretary-General.

2. Each judge shall serve only in the Chamber to which he or she has been appointed.

3. The judges of the Appeals Chamber and the judges of the Trial Chamber, respectively, shall elect a presiding judge who shall conduct the proceedings in the Chamber to which he or she was elected. The presiding judge of the Appeals Chamber shall be the President of the Special Court.

4. If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone, or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 13

QUALIFICATION AND APPOINTMENT OF JUDGES

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source.

2. In the overall composition of the Chambers, due account shall be taken of the experience of the judges in international law, including international humanitarian law and human rights law, criminal law and juvenile justice.

3. The judges shall be appointed for a three-year period and shall be eligible for reappointment.

Article 14

RULES OF PROCEDURE AND EVIDENCE

1. The Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda obtaining at the time of the establishment of the Special Court shall be applicable *mutatis mutandis* to the conduct of the legal proceedings before the Special Court.

2. The judges of the Special Court as a whole may amend the Rules of Procedure and Evidence or adopt additional rules where the applicable Rules do not, or do not adequately, provide for a specific situation. In so doing, they may be guided, as appropriate, by the Criminal Procedure Act, 1965, of Sierra Leone.

Article 15

THE PROSECUTOR

1. The Prosecutor shall be responsible for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source.

2. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Sierra Leonean authorities concerned.

3. The Prosecutor shall be appointed by the Secretary-General for a three-year term and shall be eligible for reappointment. He or she shall be of high moral character and possess the highest level of professional competence, and have extensive experience in the conduct of investigations and prosecutions of criminal cases.

4. The Prosecutor shall be assisted by a Sierra Leonean Deputy Prosecutor, and by such other Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently. Given the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.

5. In the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation programme is not placed at risk and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability.

Article 16

THE REGISTRY

1. The Registry shall be responsible for the administration and servicing of the Special Court.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the Special Court and shall be a staff member of the United Nations. He or she shall serve for a three-year term and be eligible for reappointment.

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of

testimony given by such witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children.

Article 17

RIGHTS OF THE ACCUSED

1. All accused shall be equal before the Special Court.
2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
 - (b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
 - (f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;
 - (g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 18

JUDGEMENT

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 19

PENALTIES

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Article 20

APPELLATE PROCEEDINGS

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:

- (a) A procedural error;
- (b) An error on a question of law invalidating the decision;
- (c) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

3. The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the Former Yugoslavia and for Rwanda. In the interpretation and application of the laws of Sierra Leone, they shall be guided by the decisions of the Supreme Court of Sierra Leone.

Article 21

REVIEW PROCEEDINGS

1. Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of the judgement.

2. An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

- (a) Reconvene the Trial Chamber;
- (b) Retain jurisdiction over the matter.

Article 22

ENFORCEMENT OF SENTENCES

1. Imprisonment shall be served in Sierra Leone. If circumstances so require, imprisonment may also be served in any of the States which have concluded with the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for the Former Yugoslavia an agreement for the enforcement of sentences, and which have indicated to the Registrar of the Special Court their willingness to accept convicted persons. The Special Court may conclude similar agreements for the enforcement of sentences with other States.

2. Conditions of imprisonment, whether in Sierra Leone or in a third State, shall be governed by the law of the State of enforcement subject to the supervision of the Special Court. The State of enforcement shall be bound by the duration of the sentence, subject to article 23 of the present Statute.

Article 23

PARDON OR COMMUTATION OF SENTENCES

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Special Court accordingly. There shall only be pardon or commutation of sentence if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 24

WORKING LANGUAGE

The working language of the Special Court shall be in English.

The President of the Special Court shall submit an annual report on the operation and activities of the Court to the Secretary-General and to the Government of Sierra Leone.

- (d) Exchange of letters between the United Nations and the Government of Mexico constituting an agreement regarding arrangements for the International Colloquium on “Regional Government and Sustainable Development in Tourism-driven Economies”, to be held in Cancún, State of Quintana Roo, Mexico, from 20 to 22 February 2002. Signed at New York on 15 and 19 February 2002⁸

I

LETTER FROM THE UNITED NATIONS

15 February 2002

Excellency,

1. I have the honour to refer to the arrangements for the forthcoming International Colloquium on “Regional Governance and Sustainable Development in Tourism-driven Economies” which the United Nations, represented by the Division for Public Economics and Public Administration of the Department of Economic and Social Affairs (hereinafter “the United Nations”), is organizing in cooperation with the Government of Mexico, as represented by the Government of Quintana Roo (hereinafter referred to as “the Government”). The Colloquium will be held in Cancún, State of Quintana Roo, Mexico, from 20 to 22 February 2002.

2. Pursuant to General Assembly resolution 50/225 on public administration and development adopted in 1996 which, inter alia, requested strengthening of government capacity for policy development and administrative restructuring and encouraged, where appropriate, decentralization of public institutions and services, the Group of Experts on the United Nations Programme in Public Administration and Finance at its fifteenth meeting stressed, inter alia, the need to assist national Governments in adjusting their national economic governance systems (policies and institutions) in response to globalization. Moreover, in declaring the year 2002 as the International Year of Ecotourism, the Economic and Social Council stressed the need to promote tourism within the framework of sustainable development so as to meet the needs of host countries and regions while protecting and enhancing opportunities in the future. In this context, the Colloquium to be held in Cancún, while considering the interaction between globalization and economic policies, will help the participating countries to achieve a

strong multilayered system of governance, especially a satisfactory balance between a country's central Government and its subnational governments with regard to the fiscal, administrative and political spheres.

3. The objective of the Colloquium is to promote an exchange of experiences and ideas and to provide an opportunity for new thinking about decentralized development in regions that have tied their economy to the tourism industry. The Colloquium will provide leading international and local experts and practitioners coming from the public and private sectors from developing and developed countries the opportunity to understand policy issues related to the interaction of national and subnational governments in matters of economic development.

4. The Colloquium will be attended by the following participants:

(a) Officials from Governments at the subnational and central levels from twelve developing countries;

(b) Six international experts;

(c) Five special invitees (representatives of local governments from regions that base their development on tourism);

(d) Representatives from international organizations (representatives of specialized agencies);

(e) Representatives from the private sector (transnational corporations and small and medium-size enterprises) and selected non-governmental organizations;

(f) Four officials from the United Nations Secretariat.

It is expected to have some fifty participants.

5. The United Nations will be responsible for:

(a) Planning and organizing the Colloquium and preparing the appropriate documentation in consultation with the Government;

(b) Selecting and sending invitations to all international participants;

(c) Establishing a website in English devoted to the Colloquium accessible through the portal of the United Nations Online Network in Public Administration and Finance;

(d) Editing and printing the Proceedings of the Colloquium in English;

(e) The cost of air transportation, 20 per cent of daily subsistence allowance and fees for three of the six international experts referred to under paragraph 4 (b) and one national consultant, as well as the cost of air transportation and the amount of 20 per cent of daily subsistence allowance for twenty-four participants (three experts, five special invitees,

twelve officials from Governments of developing countries and the four United Nations officials).

6. The Government will provide the following:

(a) Counterpart staff to assist in the planning and organization of the Colloquium;

(b) Conference rooms, meeting facilities, office space, and computer equipment and printers;

(c) Office supplies, stationery, and office and reproduction equipment;

(d) Communication equipment including telephone, fax and e-mail services for official use;

(e) Simultaneous interpretation services in English and Spanish;

(f) Board and lodging for fifty participants during the Colloquium;

(g) Establishing a website in Spanish devoted to the Colloquium;

(h) Selecting and sending invitations to all national participants;

(i) Transportation between the hotel and the colloquium facilities.

7. As the Colloquium is convened by the United Nations, the Convention on the Privileges and Immunities of the United Nations (“the Convention”), to which Mexico is a party, shall be applicable in respect of the Colloquium.

(a) The representatives of States participating in the Colloquium shall enjoy the privileges and immunities provided under article IV of the Convention. 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 Colloquium shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(b) The representatives of specialized or related agencies participating in or performing functions in connection with the Colloquium shall enjoy, *mutatis mutandis*, as appropriate, the privileges and immunities provided in the Convention;

(c) Without prejudice to the provisions of the Convention, all participants and persons performing functions in connection with the Colloquium shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Colloquium;

(d) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken

or written or any act performed by them in their official capacity in connection with the Colloquium;

(e) All participants and all persons performing functions in connection with the Colloquium shall have unimpeded right of entry into and exit from Mexico. The same right shall apply to their transit to and from the Colloquium area. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible. Arrangements shall also be made to ensure that visas for the duration of the Colloquium are delivered at the airport of arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and, in any case, not later than three days before the closing of the Colloquium;

(f) The United Nations, its assets, income and other property shall be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.

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

(a) Injury to persons, or damage to or loss of property in conference or other premises provided for the Colloquium;

(b) Injury to persons, or damage to or loss of property caused by or incurred in using the transportation provided for by the Government;

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

Your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand except when such injury or damage was caused by gross negligence or wilful misconduct of United Nations officials.

9. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or 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 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.

10. 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 Mexico regarding the hosting of the International Colloquium on Regional Governance and Sustainable Development in Tourism-driven Economies, which shall enter into force on the date of your reply and shall remain in force for the duration of the Colloquium and for such additional periods as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

*(Signed) Nitin DESAI
Under-Secretary-General for
Economic and Social Affairs*

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF MEXICO TO THE UNITED NATIONS

New York, 19 February 2002

I have the pleasure to refer to your note DPEPA/02/412 dated 15 February 2002 with regard to the International Colloquium on Regional Governance and Sustainable Development in Tourism-driven Economies which will take place in Cancún, Quintana Roo, Mexico, from 20 to 22 February of the current year; the text of your note reads as follows:

[See letter I]

I am pleased to confirm that the terms of the above-mentioned text are acceptable to the Government of Mexico and that your note and my reply thereto constitute an Agreement between the Government of Mexico and the United Nations regarding the International Colloquium on Regional Governance and Sustainable Development in Tourism-driven Economies which will be held in Cancún, Quintana Roo, Mexico, from 20 to 22 February 2002.

*(Signed) Adolfo AGUILAR ZINSER
Permanent Representative of Mexico
to the United Nations*

- (e) Agreement between the United Nations and the Kingdom of Spain regarding the arrangements for the Second World Assembly on Ageing, to be held in Madrid, Spain, from 8 to 12 April 2002. Signed on 25 February 2002⁹

THE UNITED NATIONS SECOND WORLD ASSEMBLY
ON AGEING

Whereas the General Assembly of the United Nations in its resolution 54/262 of 25 May 2000 decided to convene the Second World Assembly on Ageing (hereinafter referred to as “the Assembly”) in 2002, on the occasion of the twentieth anniversary of the first World Assembly on Ageing held in Vienna;

Whereas the General Assembly of the United Nations, in the same resolution, accepted with appreciation the offer of the Kingdom of Spain (hereinafter referred to as “the Government”) to act as host of the Second World Assembly on Ageing and decided that the Assembly would be held in the Kingdom of Spain;

Whereas the Second World Assembly on Ageing has as its objectives the overall review of the outcome of the first World Assembly, as well as the adoption of a revised plan of action and a long-term strategy on ageing, encompassing its periodic reviews, in the context of a society of all ages;

Whereas the General Assembly of the United Nations decided in section I, paragraph 5, of resolution 40/243 of 18 December 1985 and reaffirmed in section A, paragraph 17, of resolution 47/202 of 22 December 1992 that United Nations bodies might hold sessions away from their established headquarters when a Government issuing an invitation for a session to be held within its territory has agreed to defray the actual additional costs directly or indirectly involved, after consultation with the Secretary-General as to their nature and possible extent;

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

Article I

PLACE AND DATE OF THE ASSEMBLY

The Assembly shall be held in Madrid, Kingdom of Spain, at the Municipal Palace of Congresses of Madrid, and its annexes, as necessary, from 8 to 12 April 2002.

Article II

PARTICIPATION IN THE SECOND WORLD ASSEMBLY ON AGEING

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

(a) All States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency;

(b) Representatives of organizations that have received a standing invitation from the General Assembly to participate as observers in the sessions and work of all international conferences convened under the auspices of the General Assembly, in accordance with Assembly resolutions 3237 (XXIX) of 22 November 1974 and 43/177 of 15 December 1988;

(c) Representatives of the specialized and related agencies of the United Nations and other intergovernmental organs of the United Nations;

(d) Other interested intergovernmental organizations, to be represented as observers at the Assembly;

(e) Relevant non-governmental organizations in consultative status with the Economic and Social Council and other non-governmental organizations in the field of ageing, as well as research institutions and representatives of the private sector accredited to the Assembly in accordance with General Assembly resolution 48/108 of 20 December 1993, to be represented as observers at the Assembly;

(f) Other persons invited by the Government and the United Nations;

(g) Officials of the United Nations.

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

3. The public meetings of the Assembly shall be open to representatives of information media accredited by the United Nations at its discretion after consultation with the Government.

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide at its own expense, for as long as required for the Assembly, the necessary premises, including conference rooms for informal meetings, office space, working areas and other related facilities, as specified in the annex attached hereto.¹⁰

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

3. The Government shall, at its expense, furnish, equip and maintain in good repair all the aforesaid rooms and facilities in a manner the United Nations considers adequate for the effective conduct of the Assembly. The conference rooms shall be equipped for reciprocal simultaneous interpre-

tation in the six languages of the United Nations and shall have facilities for sound recordings in those languages, in accordance with the annex.

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

5. The Government shall install, at its own expense, within the Assembly area, a registration desk, restaurant facilities, a bank, a post office, a telephone, telefax and telex facilities, information and travel facilities, as well as a secretarial service centre, equipped in consultation with the United Nations, for the use of delegations to the Assembly on a commercial basis.

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

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

8. The Government shall bear the cost of all necessary utility services, including local telephone communications, of the secretariat of the Assembly and its communications by telephone, telefax, telex and electronic communications system between the secretariat of the Assembly and United Nations offices when such communications are made or authorized by, or on behalf of, the Secretary-General of the Assembly, including official United Nations information cables between the Assembly site and United Nations Headquarters, and the various United Nations information centres.

9. The Government shall bear the cost of the transport and insurance charges, from any established United Nations Office to the site of the Assembly and return, of all United Nations equipment and supplies required for the functioning of the Assembly which are not provided locally by the Government. The United Nations shall determine the mode of shipment of such equipment and supplies, in consultation with the Government.

10. Premises and facilities provided in accordance with this article may be made available, in an appropriate manner, to the observers from the non-governmental organizations referred to in article II, paragraph 1 (e) above for the conduct of their activities relating to their contribution to the Assembly.

Article IV

MEDICAL FACILITIES

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

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

Article V

ACCOMMODATION

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

Article VI

TRANSPORT

1. The Government shall provide transport between the airport and the Assembly and principal hotels for the members of the United Nations Secretariat servicing the Assembly upon their arrival or departure.

2. The Government shall ensure the availability of transportation for all participants to and from the airport for three days before and two days after the Assembly as well as the Assembly premises for the duration of the Assembly.

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

Article VII

POLICE PROTECTION

The Government shall furnish, at its own expense, such police protection as is required to ensure the effective functioning of the Assembly 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 security officer provided by the Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

Article VIII

LOCAL PERSONNEL FOR THE ASSEMBLY

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

2. The Government shall engage and provide, at its own expense, the local personnel required in addition to the United Nations staff, as specified in the annex to this Agreement.

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

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

Article IX

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial responsibility provided for elsewhere in this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the Assembly in the Kingdom of Spain rather than at established United Nations Headquarters (New York). Such additional costs, which are provisionally estimated at US\$ 970,781, shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the Secretary-General to undertake preparatory visits to the Government and to attend the Assembly, as well as the costs of shipment of equipment and supplies not available locally. Arrangements for such travel and shipment shall be made by the secretariat of the Assembly in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices in regard to travel standards, subsistence payments (per diem) and terminal expenses. The list of United Nations officials needed to service the Assembly and the related travel costs are provided in the annex.

2. The Government shall, no later than 1 January 2002, deposit with the United Nations the sum of US\$ 970,781, representing the total estimated costs referred to in paragraph 1 of this article.

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

4. The deposit referred in paragraph 2 above shall be used only to pay the obligations of the United Nations in respect of the Assembly.

5. After the conclusion of the Assembly, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs paid by the United Nations and to be borne by the Government pursuant to paragraph 1 of this article. These costs shall be expressed in United States dollars, using the United Nations official rate of exchange at the time the United Nations paid the cost. The United Nations, on the basis of this detailed set of accounts, shall refund to the Government any funds unspent out of the deposit or advance referred to in paragraph 2 of this article within

one month of the receipt of the detailed accounts. Should the actual additional costs exceed the deposit, the Government will remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts will be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustment of accounts will be subject to any observations which may arise from the audit carried out by the United Nations Board of Auditors, whose determination shall be accepted as final by both the Government and the United Nations.

Article X

LIABILITY

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

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

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

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

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

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which the Kingdom of Spain is a party, shall be applicable in respect of the Assembly, in particular, the representatives of States referred to in article II, paragraph 1 (a) above shall enjoy the privileges and immunities provided under article IV of the Convention; the officials of the United Nations performing functions in connection with the Assembly referred to in article II, paragraphs 1 (g) and 2 above shall enjoy the privileges and immunities provided under articles V and VII of the Convention; and any experts on mission for the United Nations in connection with the Assembly shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The participants referred to in article II, paragraph 1 (b) 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 Assembly. The observers referred to in article II, paragraph 1 (*d*), (*e*) and (*f*) above shall be accorded immunity from legal process in respect of words spoken and acts done in connection with the Assembly.

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

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

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

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

7. All persons referred to in article II shall have the right of entry into and exit from the Kingdom of Spain and no impediment shall be imposed on their transit to and from the Assembly area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted to all those invited to the Assembly free of charge, as speedily as possible and no later than two weeks before the date of the opening of the Assembly. If the application for a visa is not made at least three weeks before the opening of the Assembly, the visa shall be granted when possible within three days of receipt of the application.

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

9. All persons referred to in article II above shall have the right to take out of the Kingdom of Spain at any time of their departure, without any restriction, any unexpended portions of the funds they brought in to the Kingdom of Spain in connection with the Assembly and to reconvert any such funds at the prevailing market rate.

Article XII

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation, tax-free and duty-free, of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the Assembly. It shall issue without undue delay to the United Nations any necessary import and export permits for this purpose. Any such equipment shall be re-exported after the conclusion of the Assembly, unless alternative arrangements have been made with the agreement of the Government.

Article XIII

SETTLEMENT OF DISPUTE

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

Article XIV

FINAL PROVISIONS

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

This Agreement shall be applied provisionally from the date of signature, and shall enter into force on the date of receipt of the last of the notifications by which the Parties will have informed each other of the completion of their respective formal requirements.

SIGNED this 25th day of February 2002 in English and Spanish, both texts being equally authentic.

For the Kingdom of Spain:

[Signature]

Juan José LUCAS GIMÉNEZ

Minister of the Presidency

For the United Nations:

[Signature]

Nitin DESAI

*Under-Secretary-General for
Economic and Social Affairs*

- (f) Exchange of letters between the United Nations and the Government of the People's Republic of China constituting an agreement regarding a conference on disarmament, entitled "A Disarmament Agenda for the 21st Century", to be held in Beijing from 2 to 4 April 2002. Signed at New York on 11 and 22 March 2002¹¹

I

LETTER FROM THE UNITED NATIONS

11 March 2002

Excellency,

I have the honour to refer to the kind offer of your Government to co-operate with the United Nations in holding a conference on disarmament, entitled "A Disarmament Agenda for the 21st Century". The Conference is being organized by the Department for Disarmament Affairs and the Department of Arms Control of the Ministry of Foreign Affairs and will be held at the International Hotel in Beijing from 2 to 4 April 2002.

As agreed by the parties, some 42 participants, 36 from abroad and 5 to 6 from the host country, are to be invited. These participants will comprise senior-level policymakers from Governments as well as eminent academics, non-governmental organizations and private research groups in the field. Staff members from the Department for Disarmament Affairs will also attend in various capacities.

The United Nations will be responsible for costs related to the following:

- (a) Round-trip travel to Beijing and appropriate daily subsistence allowance for international participants and United Nations staff;
- (b) Communications (telephone and facsimile) and miscellaneous costs arising from the work of the United Nations Secretariat for the Conference;
- (c) Hospitality sponsored by the United Nations;
- (d) Materials and supplies related to the Conference, such as name-plates, ID cards and stationery.

The Government of the People's Republic of China will be responsible for the costs related to the following:

- (a) The provision of conference facilities and office space for United Nations substantive staff and an area for documentation and information services for the duration of the Conference. The staff offices shall be set up and available five days before the opening session;
- (b) Hotel accommodations and meals for international participants;

(c) All local transportation, including transportation from the airport to the hotel and vice versa, for all participants, as well as in conjunction with hospitality and the cultural programme sponsored by the Government;

(d) Simultaneous interpretation services (in English and Chinese) and equipment for the duration of the Conference;

(e) Office equipment, including two photocopy machines, two Pentium III personal computer workstations with English keyboards and Internet access and printers;

(f) Sound recording of all sessions of the Conference;

(g) Local staff, including assistants and technicians;

(h) Services of a photographer throughout the Conference and at the conclusion of the Conference provision to the Department for Disarmament Affairs of a representative selection of photographs as well as negatives.

With respect to the Conference, I wish to propose that the following terms shall apply:

(a) (i) The Convention on the Privileges and Immunities of the United Nations 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 by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Conference shall be accorded the privileges and immunities provided under articles V and VII of the Convention;

(ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the 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. Personnel provided by the Government pursuant to this Agreement shall enjoy the status necessary for the independent exercise of their functions in connection with the Conference;

(b) All participants and all persons performing functions in connection with the Conference shall have the right of unimpeded entry into and exit from the People's Republic of China. Visas and entry permits, where required, shall be granted as promptly as possible;

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

Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or demand, except where such actions, claims or demands arise from the gross negligence or wilful misconduct of the United Nations or any of its personnel;

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

The arrangements mentioned above shall be valid for the duration of the Conference, including such time before and after the Conference as may be required for the necessary preparatory and concluding work relating to the Conference.

I further propose that, upon receipt of a letter expressing your Government's concurrence with the above, the present letter and your Government's reply shall constitute an Agreement between the United Nations and the Government of the People's Republic of China concerning the provision of host facilities by your Government for the Conference.

(Signed) Jayantha DHANAPALA
Under-Secretary-General for Disarmament Affairs

II

LETTER FROM THE PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA

22 March 2002

Excellency,

I have the honour to acknowledge the receipt of your letter dated 11 March 2002, which is read as follows:

[See letter I]

In reply, I have the honour, on behalf of the Government of the People's Republic of China, to confirm the above points.

(Signed) WANG Yingfan
Ambassador
Permanent Representative
of the People's Republic of China
to the United Nations

- (g) Exchange of letters between the United Nations and the Government of Mongolia constituting an agreement regarding a meeting entitled “Supportive Environment for Cooperatives—A Stakeholder Dialogue on Definitions, Prerequisites, and Process of Creation”, to be held in Ulaanbaatar, Mongolia, from 15 to 17 May 2002. Signed at New York on 1 and 11 April 2002¹²

I

LETTER FROM THE UNITED NATIONS

1 April 2002

Excellency,

I have the honour to refer to General Assembly resolutions 54/123 and 56/114, adopted at its fifty-fourth session in 1999 and at its fifty-sixth session in 2001, respectively, requesting the Secretary-General to create a supportive environment for the development of cooperatives, including through the organization of workshops and seminars at the national, sub-regional and regional levels.

Pursuant to the objectives of the programme, the United Nations, represented by the Department of Economic and Social Affairs (hereinafter referred to as “the United Nations”), and the Government of Mongolia (hereinafter referred to as “the Government”), would like to hold a meeting on “Supportive Environment for Cooperatives—A Stakeholder Dialogue on Definitions, Prerequisites, and Process of Creation” (hereinafter referred to as “the Meeting”), with the assistance of the Committee for the Promotion and Advancement of Cooperatives (hereinafter referred to as “COPAC”), oriented towards providing support to Member States and national, regional and international cooperative organizations in their efforts to create a supportive cooperative environment and to promote an exchange of experience and best practices.

The Meeting, scheduled to be held in Ulaanbaatar, Mongolia, from 15 to 17 May 2002, will develop recommendations pertaining to the crea-

tion of a supportive environment for cooperatives which will be included in the report of the Secretary-General on cooperatives to the General Assembly at its fifty-eighth session. Papers presented at the Meeting would also be useful inputs in the preparation of the same report.

The Meeting will be attended by the following participants:

(a) Eight to ten participants with specialized expertise in cooperative development;

(b) Two to five participants from the specialized agencies;

(c) Four to eight participants from other relevant international and national cooperative organizations, and governmental, developmental and research institutions;

(d) Two staff members from the United Nations;

(e) Forty participants from the host country.

The total number of participants will be approximately sixty.

The Meeting will be conducted in English with simultaneous interpretation into Mongolian.

The United Nations, with the assistance of COPAC, will be responsible for:

(a) The planning and actual running of the Meeting and the preparation of the appropriate documentation;

(b) The preparation of the invitation to the participants (as well as selecting the participants) referred to above in paragraph 3 (a), (b) and (c);

(c) Travel costs and per diem for the participants referred to above in paragraph 4 (a) and (b);

(d) The cost of interpretation for the plenary session;

(e) Editing and reproduction of technical papers in English;

(f) The preparation and publication of the report of the Meeting.

The Government will be responsible for the following:

(a) The opening statements;

(b) Conference facilities;

(c) Administrative support personnel, including secretarial assistance for advance planning and conduct of the Meeting;

(d) Office supplies, computers, printing equipment, stationery, office and reproduction equipment, copying machines, and overhead and PowerPoint projector;

(e) Secretarial staff for the duration of the Meeting on a full-time basis;

(f) Telephone, fax (international) and e-mail services for official use by the organizers;

(g) Transport arrangements from hotel(s) to the conference facilities for the participants and the staff of the United Nations.

Travel and daily subsistence allowance for participants referred to in paragraph 4 (b), (c) and (e) will be the responsibility of their respective organizations.

As the Meeting will be convened by the United Nations, the appropriate United Nations terms shall apply:

(a) The Convention on the Privileges and Immunities of the United Nations (“the Convention”) and the Convention on the Privileges and Immunities of the Specialized Agencies, to both of which Mongolia is a party, shall be applicable in respect of the Meeting. In particular, any representatives of States and of intergovernmental organs invited by the United Nations to participate in the Meeting shall enjoy the privileges and immunities accorded by article IV of the Convention and all other participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts performing missions for the United Nations under article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Meeting shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies;

(b) Without prejudice to the provisions of subparagraph (a) above, all participants and persons performing functions in connection with the Meeting shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting;

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

(d) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Mongolia and no impediment shall be imposed on their transit to and from the Meeting area. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible. Arrangements shall also be made to ensure that visas for the duration of the Meeting are delivered at the airport of arrival to those participants who were unable to obtain them prior to their arrival. When applications are made four weeks before

the opening of the Meeting, visas shall be granted no later than two weeks before the opening of the Meeting. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and no later than three days before the opening;

(e) The Government shall allow temporary importation, tax-free and duty-free, of all articles for the official use of the secretariat of the Meeting. No articles imported under this exemption may be sold, hired or lent out or otherwise disposed of in Mongolia, except under conditions agreed with the Government. It shall issue without delay to the United Nations any necessary import and export permits for this purpose.

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

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

(b) Injury to persons, or damage to or loss of property caused by or incurred in using the transportation provided by your Government;

(c) The employment for the Meeting of personnel provided or arranged for by your Government.

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

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement, except for a dispute that is regulated by section 30 of the Convention or section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies, shall be resolved by negotiation or any other agreed mode of settlement. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of either party for a final decision 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 appointment by the other party having notified the name of its arbitrator, or if the first two arbitrators do not, within three months of the appointment or nomination of the second one of them, appoint the Chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

I further propose that, upon receipt of your Government's confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of Mongolia, which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation and for all matters relating to any of its provisions to be settled.

(Signed) Nitin DESAI
Under-Secretary-General
Department of Economic and Social Affairs

EXPERT GROUP MEETING ON SUPPORTIVE ENVIRONMENT FOR COOPERATIVES—
A STAKEHOLDER DIALOGUE ON DEFINITIONS, PREREQUISITES, AND PROCESS
OF CREATION (ULAANBAATAR, MONGOLIA, 15-17 MAY 2002)

1. Reference is made to the arrangement between the United Nations and the Government of Mongolia to jointly organize an expert group meeting on “Supportive Environment for Cooperatives—A Stakeholder Dialogue on Definitions, Prerequisites, and Process of Creation” with the assistance of the Committee for the Promotion and Advancement of Cooperatives (COPAC). The Meeting is scheduled to be held in Ulaanbaatar, Mongolia, from 15 to 17 May 2002. Its aim is to provide support to Member States and national, regional and international cooperative organizations in their efforts to create a supportive cooperative environment and to promote an exchange of experience and best practice.

2. The Meeting will be attended by the following participants:

(a) Eight to ten participants with specialized expertise in cooperative development;

(b) Two to five participants from the specialized agencies and other parts of the United Nations system;

(c) Four to eight participants from other relevant international and national cooperative organizations, and governmental, developmental and research institutions;

(d) Two staff members from the United Nations Secretariat;

(e) Forty participants from the host country.

The total number of participants will be approximately sixty.

3. The Meeting will be conducted in English with simultaneous interpretation into Mongolian during the plenary session.

4. The Committee for the Promotion and Advancement of Cooperatives (COPAC) will provide:

(a) Assistance in the selection and/or invitation of the participants referred to above in paragraph 2 (a) and (c);

(b) Travel and per diem for its representatives participating in the Meeting;

(c) Travel and per diem for some of the participants referred to above in paragraph 2 (a);

(d) Cost of interpretation for the plenary session (not exceeding US\$ 1,000).

5. The cost of the expenditures referred to in paragraph 4 (c) and (d) is not to exceed US\$ 10,000.

6. The United Nations will be responsible for:

(a) The planning and actual running of the Meeting and the preparation of the appropriate documentation;

(b) The selection and/or invitation of the participants referred to in paragraph 2 (a), (b) and (c);

(c) Travel and per diem for those participants referred to in paragraph 2 (a) and not funded by COPAC. These participants will be determined by the United Nations;

(d) Travel and per diem for its representatives participating in the Meeting;

(e) Editing and reproduction of the technical papers in English, including the preparation and publication of the report of the Meeting, as covered by the programme budget for 2000-2001.

The total cost of the expenditures referred to in paragraph 6 (c) and (d) is not to exceed US\$ 30,000.

7. Travel and daily subsistence allowances for other participants referred to in paragraph 2 (b), (c) and (e) will be the responsibility of their respective organizations.

8. As the Meeting will be convened by the United Nations, the standard United Nations terms shall apply.

I further propose that upon receipt of confirmation by the United Nations in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Committee for the Promotion and Advancement of Cooperatives (COPAC) regarding the Meeting on Supportive Environment for Cooperatives, which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation and completion of its work and for the resolution of any matters arising out of the Agreement.

For the United Nations:

[Signature]

Odile FRANK

Officer-in-Charge

*Division for Social Policy and
Development*

*Department of Economic
and Social Affairs*

*For the Committee for the
Promotion and Advancement of
Cooperatives (COPAC):*

[Signature]

María Elena CHÁVEZ-P.

Coordinator

*Committee for the Advancement of
Cooperatives (COPAC)*

15 route des Morillons

1218 Grand Saconnex

Geneva, Switzerland

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF MONGOLIA

New York, 11 April 2002

Excellency,

Please accept the following as written confirmation of acceptance by the Government of Mongolia of the terms and conditions set out in your letter dated 1 April 2002 (Ref.: DESA/02/44). The contents of this letter, together with those contained in the above-mentioned correspondence of 1 April 2002, shall be construed to constitute an Agreement between the United Nations and the Government of Mongolia regarding the organization of the meeting on “Supportive Environment for Cooperatives—A Stakeholder Dialogue on Definitions, Prerequisites, and Process of Creation” to be held in Ulaanbaatar from 15 to 17 May 2002. It is my understanding that the Agreement shall enter into force as of today and remain in force in accordance with its terms.

(Signed) Jargalsaikhan ENKHTSAIKHAN
Ambassador

*Permanent Representative of Mongolia
to the United Nations*

- (h) Exchange of letters between the United Nations and the Government of Sweden constituting an agreement regarding the hosting of the meeting of the members of the Committee on the Elimination of Discrimination against Women, to be held in Lund, Sweden, from 22 to 24 April 2002. Signed at New York on 9 and 18 April 2002¹³

I

LETTER FROM THE UNITED NATIONS

9 April 2002

Excellency,

1. Further to the negotiations that have taken place in view of the signature of a host country agreement in the form of an exchange of letters between your Government and the United Nations for the hosting of the meeting of the members of the Committee on the Elimination of Discrimination against Women to be held in Lund, Sweden, from 22 to 24 April 2002, I am pleased to forward an original of the letter that I signed on behalf of the United Nations.

2. The attached letter reflects the arrangements entered into between the United Nations Office of Legal Affairs and the Swedish Ministry of Foreign Affairs on 27 November 1987, relating to the model agreements

utilized by the United Nations for its seminars and workshops in Sweden. In this connection, I wish to recall that the United Nations will regard the persons officially invited by it as having the status of experts on mission within the meaning of article IV of the Convention on the Privileges and Immunities of the United Nations.

(Signed) Nitin DESAI
Under-Secretary-General
Department of Economic and Social Affairs

9 April 2002

Excellency,

1. I have the honour to refer to General Assembly resolution 56/229 of 24 December 2001, pursuant to which the General Assembly expressed its appreciation for the efforts made by the Committee on the Elimination of Discrimination against Women to improve the efficiency of its working methods and encouraged further efforts in that regard.

2. In this context, the United Nations, represented by the Department of Economic and Social Affairs (hereinafter referred to as “the United Nations”), in cooperation with the Government of Sweden (hereinafter referred to as “the Government”), would like to convene a meeting of the members of the Committee on the Elimination of Discrimination against Women on, inter alia, working methods of the Committee (hereinafter referred to as “the Meeting”), from 22 to 24 April 2002, in Lund, Sweden.

3. The Meeting will be attended by the following participants:

(a) Twenty-three members of the Committee on the Elimination of Discrimination against Women;

(b) Five officials from the United Nations;

(c) Twelve participants from the host country.

The United Nations shall provide a list of the participants to the Government.

4. The total number of participants will be approximately forty.

5. The Meeting will be conducted in English and Spanish.

6. The United Nations will be responsible for:

(a) Travel and per diem of any United Nations officials not paid for by the Government;

(b) The selection of participants, in consultation with the Government;

(c) The preparation of a draft background paper in English, French and Spanish;

(d) The provision of substantive support before, during and after the Meeting;

(e) The preparation and issuance of the final report in English.

7. The Government will be responsible for:

(a) Costs of travel and per diem for the members of the Committee on the Elimination of Discrimination against Women, at least three of the

five officials of the United Nations, and for any costs of the participants from the host country;

(b) Meeting facilities;

(c) Administrative support personnel, including secretarial assistance for advance planning and conduct of the meeting;

(d) Office supplies, computers, printing equipment, stationery, office and reproduction equipment, and copying machines;

(e) Translation services;

(f) Telephone (international), fax (international) and e-mail services for official use by the United Nations;

(g) Secretarial staff for the duration of the Meeting on a full-time basis;

(h) Local transportation and other logistical and organizational services, including hotel and travel arrangements.

8. I wish to propose that the following standard United Nations terms and conditions shall apply to the Meeting:

(a) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 (“the Convention”), to which Sweden is a party, shall be applicable in respect of the Meeting. Officials of the United Nations participating in or performing functions in connection with the Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(b) Without prejudice to the provisions of the Convention, all participants and persons performing functions in connection with the Meeting shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting;

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

(d) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Sweden. Visas and entry/exit permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Meeting, visas shall be granted no later than two weeks before the opening of the Meeting. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and no later than three days before the opening. Arrangements shall also be made to ensure that the visas for the duration of the Meeting are delivered at the airport of arrival to those participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Meeting.

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

- (a) Injury to persons or damage to or loss of property in the conference or office premises provided for the Meeting;
- (b) Injury to persons, or damage to or loss of property caused by or incurred in using the transportation provided or arranged by the Government;
- (c) The employment for the Meeting of personnel provided or arranged by the Government.

The Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except where it is agreed by the Secretary-General of the United Nations and the Government that such claims arise from gross negligence or wilful misconduct of such persons.

10. Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, shall be resolved by negotiations or other agreed mode of settlement. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of either party for a final decision 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 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.

11. 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 Sweden, which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation and for the resolution of any matters arising out of the Agreement.

(Signed) Nitin DESAI
Under-Secretary-General
Department of Economic and Social Affairs

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF SWEDEN

New York, 18 April 2002

Dear Mr. Desai,

I have the honour to refer to your letter of 9 April 2002 in which you propose that the Government of Sweden and the United Nations shall enter into a host country agreement, which has been attached to your letter, in the form of an exchange of letters for the hosting of the meeting of the members of the Committee on the Elimination of Discrimination against Women to be held in Lund, Sweden, from 22 to 24 April 2002.

I have the honour to express my Government's acceptance of the above-mentioned Agreement. Thus, this affirmative reply and your letter constitute an Agreement between the Government of Sweden and the United Nations.

(Signed) Pierre SCHORI
Ambassador
Permanent Representative
Permanent Mission of Sweden to the United Nations

- (i) Agreement between the United Nations and the Government of the Federal Republic of Germany regarding the arrangements for the Eighth United Nations Conference on the Standardization of Geographical Names, to be held in Berlin from 26 August to 6 September 2002. Signed on 30 April 2002¹⁴

Whereas the Economic and Social Council of the United Nations by its decision 1998/221 of 7 May 1998 endorsed the recommendation that the Eighth United Nations Conference on the Standardization of Geographical Names (hereinafter referred to as "the Conference") be convened for eight working days in 2002;

Whereas the Economic and Social Council of the United Nations, in its decision 1999/9 of 26 July 1999, welcomed the generous offer of the Government of the Federal Republic of Germany (hereinafter referred to as "the Government") to act as host of the Eighth United Nations Conference on the Standardization of Geographical Names and decided that the Conference will be held in the Federal Republic of Germany;

Whereas the Economic and Social Council of the United Nations by its decision 2000/230 of 26 July 2000 endorsed the recommendation that the twenty-first session of the United Nations Group of Experts on Geographical Names (hereafter referred to as "the session") be convened for

two working days in Berlin in conjunction with the Eighth United Nations Conference on the Standardization of Geographical Names;

Whereas the Eighth United Nations Conference on the Standardization of Geographical Names will provide encouragement and guidance to those nations which have no national organization for the standardization and coordination of national geographical names and for the collection and dissemination of information concerning the technical procedures and systems used in the standardized transliteration of geographical names into the Roman and into other non-Roman scripts of other countries and produce national gazetteers and to establish procedures for the transliteration of national names into other scripts;

Whereas the General Assembly of the United Nations decided in section I, paragraph 5, of resolution 40/243 of 18 December 1985 and reaffirmed in section A, paragraph 17, of resolution 47/202 of 22 December 1992 that United Nations bodies might hold sessions away from their established headquarters when a Government issuing an invitation for a session to be held within its territory has agreed to defray the actual additional costs directly or indirectly involved, after consultation with the Secretary-General as to their nature and possible extent;

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

Article I

PLACE AND DATE OF THE CONFERENCE

The Conference shall be held in Berlin, in the Federal Republic of Germany, at the Conference Facility in the Ministry of Foreign Affairs, from 26 August to 6 September 2002.

Article II

PARTICIPATION IN THE EIGHTH UNITED NATIONS CONFERENCE ON THE STANDARDIZATION OF GEOGRAPHICAL NAMES

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

(a) Representatives of all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency;

(b) Representatives of organizations that have received a standing invitation from the General Assembly to participate as observers in the sessions and work of all international conferences convened under the auspices of the General Assembly, in accordance with Assembly resolutions 1237 (XXIX) of 22 November 1974 and 43/177 of 15 December 1988;

(c) Representatives of the specialized and related agencies of the United Nations;

(d) Representatives of intergovernmental organs of the United Nations and other interested intergovernmental organizations, to be represented as observers at the Conference;

(e) Representatives of relevant non-governmental organizations in consultative status with the Economic and Social Council and other non-governmental organizations in the field of cartography and geography, as well as research institutions and business sector entities and representatives of the private sector accredited to the Conference in accordance with Economic and Social Council resolution 1996/31 of 25 July 1996, to be represented as observers at the Conference;

(f) Officials of the United Nations.

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

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

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide at its own expense, for as long as required for the Conference, the necessary premises, including conference rooms for informal meetings, office space, working areas and other related facilities, as specified in the annex attached hereto.¹⁵

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

3. The Government shall, at its expense furnish, equip and maintain in good repair all the aforesaid rooms and facilities in a manner the United Nations considers adequate for the effective conduct of the Conference. The conference rooms shall be equipped for reciprocal simultaneous interpretation in the six languages of the United Nations and shall have facilities for sound recordings in those languages, in accordance with the annex.

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

5. The Government shall ensure that there will be within walking distance from the Conference area a registration desk, restaurant facilities, a bank, a post office, telephone, and information and travel facilities, as well as a secretarial service centre, equipped in consultation with the United Nations, for the use of delegations to the Conference on a commercial basis.

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

7. The Government shall bear the cost of all necessary utility services, including local telephone communications, of the secretariat of the Conference and its communications by telephone and electronic communications system between the secretariat of the Conference and the United Nations offices when such communications are made or authorized by, or on behalf of, the Secretary-General of the Conference, including official United Nations information cables between the Conference site and United Nations Headquarters, and the various United Nations information centres.

8. The Government shall bear the cost of the transport and insurance charges from any established United Nations Office to the site of the Conference and return, of all United Nations equipment and supplies required for the functioning of the Conference which are not provided locally by the Government. The United Nations shall determine the mode of shipment of such equipment and supplies, in consultation with the Government.

9. Premises and facilities provided in accordance with this article may be made available, in an appropriate manner, to the observers from the non-governmental organizations referred to in article II, paragraph 1 (e) above for the conduct of their activities relating to their contribution to the Conference.

Article IV

MEDICAL FACILITIES

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

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

Article V

ACCOMMODATION

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

Article VI

TRANSPORT

1. The Government shall provide transport between the airport and the Conference and principal hotels for staff members of the United Nations Secretariat servicing the Conference upon their arrival or departure.

2. The Government shall ensure the availability of transportation for all participants to and from the airport for three days before and two days after the Conference as well as the Conference premises for the duration of the Conference.

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

Article VII

POLICE PROTECTION

The Government shall furnish, at its own expense, such police protection as is required to ensure the 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 security officer provided by the Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

Article VIII

LOCAL PERSONNEL FOR THE CONFERENCE

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

2. The Government shall engage and provide, at its own expense, the local personnel required in addition to the United Nations staff, as specified in the annex to this Agreement.

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

4. The Government shall arrange, at its own expense, at the request or on behalf of the Secretary-General of the Conference, for adequate numbers of the local personnel referred to in paragraph 2 above to be avail-

able to maintain such night-time services as may be required in connection with the Conference.

Article IX

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial responsibility provided for elsewhere in this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the Conference in Germany rather than at established United Nations Headquarters (New York). Such additional costs, which are provisionally estimated at US\$ 364,424 (three hundred sixty-four thousand four hundred twenty-four United States dollars), shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the Secretary-General to undertake preparatory visits to the Federal Republic of Germany and to attend the Conference, as well as the costs of shipment of equipment and supplies not available locally. Arrangements for such travel and shipment shall be made by the secretariat of the Conference in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices in regard to travel standards, baggage allowances, subsistence payments (per diem) and terminal expenses. The list of United Nations officials needed to service the Conference and the related travel costs are provided in the annex.

2. The Government shall, no later than 30 April 2002, deposit with the United Nations the sum of US\$ 364,424 (three hundred sixty-four thousand four hundred twenty-four United States dollars), representing the total estimated costs referred to in paragraph 1 of this article.

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

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

5. After the conclusion of the Conference, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs paid by the United Nations and to be borne by the Government pursuant to paragraph 1 of this article. These costs shall be expressed in United States dollars, using the United Nations official rate of exchange at the time the United Nations paid the cost. The United Nations, on the basis of this detailed set of accounts, shall refund to the Government any funds unspent out of the deposit or advance referred to in paragraph 2 of this article within one month of the receipt of the detailed accounts. Should the actual additional costs exceed the deposit, the Government will remit the outstanding balance within one month of the receipt of the detailed accounts. The final

accounts will be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustment of accounts will be subject to any observations which may arise from the audit carried out by the United Nations Board of Auditors, whose determination shall be accepted as final by both the United Nations and the Government.

Article X

LIABILITY

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

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

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

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

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

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (hereafter referred to as “the Convention”), to which the Federal Republic of Germany is a party, shall be applicable in respect of the Conference; in particular, the representatives of States referred to in article II, paragraph 1 (a) above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations performing functions in connection with the Conference referred to in article II, paragraphs 1 (f) and 2 above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention, and any experts on mission for the United Nations in connection with the Conference shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The participants referred to in article II, paragraph 1 (b), (d) and (e) above, shall be granted immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Conference. The United Nations will notify the Government of the names and status of these participants.

3. The privileges and immunities provided in the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 or in the Agreement on the Privileges and Immunities of the Inter-

national Atomic Energy Agency of 1 July 1959 shall apply, as appropriate, to the representatives of the specialized or related agencies referred to in article II, paragraph 1 (c) above.

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

5. The personnel provided by the Government under article VIII above shall enjoy the status necessary for the independent exercise of their functions in connection with the Conference.

6. All persons referred to in article II shall have the right of entry into and exit from the Federal Republic of Germany and no impediment shall be imposed on their transit to and from the Conference area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted to all those invited to the Conference free of charge, as speedily as possible and no later than two weeks before the date of the opening of the Conference. If in exceptional cases the application of a visa is not made at least three weeks before the opening of the Conference, the visa shall be granted when possible within three days from receipt of the application.

7. For the purpose of the application of the Convention, the Conference premises shall be deemed to constitute premises of the United Nations and shall be inviolable for the duration of the Conference.

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

Article XII

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation, tax-free and duty-free, of all equipment and goods, including technical equipment accompanying representatives of information media for their duties on condition that such equipment be re-exported; it shall waive import duties on goods and technical equipment intended for official use at the Conference. The Government shall issue the United Nations any necessary import and export permits for this purpose without undue delay.

Article XIII

SETTLEMENT OF DISPUTE

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not set-

tled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the Chairman, to be chosen by the first two. If either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. However, any such dispute that involves a question regulated by the Convention shall be dealt with in accordance with section 30 of that Convention.

Article XIV

FINAL PROVISIONS

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

2. This Agreement shall enter into force on the date of its signature and shall remain in force for the duration of the Conference and for such a period thereafter as is necessary for all matters relating to any of its provisions to be settled.

SIGNED, this 30th day of April 2002, at New York, in English.

For the United Nations:

[Signature]

Nitin DESAI

*Under-Secretary-General for
Economic and Social Affairs*

For the Government:

[Signature]

Dr. Hanns Heinrich SCHUMACHER

*Chargé d'affaires a.i. of the
Federal Republic of Germany
to the United Nations*

(j) Exchange of letters between the Government of Malta and the United Nations extending the Agreement of 9 October 1987 establishing the International Institute on Ageing in Malta.¹⁶ Signed at New York on 3 and 30 April 2002

I

LETTER FROM THE GOVERNMENT OF MALTA

3 April 2002

I wish to refer to the exchange of notes dated 28 May 1997 and 26 November 1997 between the Government of Malta and the United Nations, relating to the extension from 1 January 1998 to 31 December 2002 of the Agreement signed between the Government of Malta and the United Nations on 9 October 1987 establishing the International Institute on Ageing in Malta.

With a view to continuing cooperation, and following intensive consultations carried out by the Permanent Representative of Malta to the

United Nations with the Department of Economic and Social Affairs, the Government of Malta would like to propose that the Agreement regarding the International Institute on Ageing be renewed for another period of five years starting 1 January 2003.

If it is agreeable, I propose that, upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the Government of Malta and the United Nations extending for a five-year period starting on 1 January 2003 the Agreement signed on 9 October 1987, which shall enter into force on the date of receipt of your confirmation.

(Signed) Joe BORG
Minister of Foreign Affairs

II

LETTER FROM THE UNITED NATIONS

30 April 2002

Excellency,

I have the honour to refer to your letter dated 3 April 2002, which reads as follows:

[See letter I]

I have the honour to confirm that the contents of the above-mentioned letter are acceptable to me and therefore your letter and this reply will be regarded as constituting an Agreement extending, for a period of five years commencing 1 January 2003, the Agreement concluded on 9 October 1987 between the United Nations and Malta regarding the establishment in Malta of the International Institute on Ageing, as previously extended.

(Signed) Kofi A. ANNAN
Secretary-General

- (k) Agreement between the United Nations and the Government of Indonesia regarding arrangements for the Fourth Session of the Preparatory Committee for the World Summit on Sustainable Development. Signed at New York on 14 May 2002¹⁷

Whereas the General Assembly of the United Nations by its resolution 55/199 of 20 December 2000 decided to organize in 2002 the ten-year review of progress achieved in the implementation of the outcome of the United Nations Conference on Environment and Development at the summit level in order to reinvigorate the global commitment to sustainable development;

Whereas the General Assembly decided to call the summit the World Summit on Sustainable Development (hereinafter referred to as “the Summit”);

Whereas the General Assembly further decided that the review should focus on the identification of accomplishments and areas where further efforts were needed to implement Agenda 21 and other outcomes of the United Nations Conference on Environment and Development, and should focus on action-orientated decisions in areas where further efforts are needed to implement Agenda 21, address, within the framework of Agenda 21, new challenges and opportunities, and result in renewed political commitment and support for sustainable development, consistent, *inter alia*, with the principle of common but differentiated responsibilities;

Whereas the General Assembly further decided that the Summit, including its preparatory process, should ensure a balance between economic development, social development and environmental protection as these were interdependent and mutually reinforcing components of sustainable development;

Whereas the General Assembly further decided that the Commission on Sustainable Development acting as the Preparatory Committee for the Summit would hold its final, fourth session at the ministerial level in May 2002 in Indonesia (hereinafter referred to as “the Fourth Session”) and accepted with gratitude the generous offer of the Government of Indonesia to host it;

Whereas the General Assembly decided in section I, paragraph 5, of resolution 40/243 of 18 December 1985 and reaffirmed in section A, paragraph 17, of resolution 47/202 of 22 December 1992 that United Nations bodies and organs might hold sessions away from established headquarters when the Government issuing the invitation for a session to be held within its territory agrees to defray, after consultations with the Secretary-General of the United Nations as to their nature and possible extent, the additional cost directly or indirectly incurred;

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

Article I

PLACE AND DATE OF THE FOURTH SESSION OF THE PREPARATORY COMMITTEE

The Fourth Session shall be held in Bali, Indonesia, from 27 May to 7 June 2002. Pre-sessional consultations will be held from 24 to 26 April 2002.

Article II

PARTICIPATION IN THE FOURTH SESSION OF THE PREPARATORY COMMITTEE

1. Participation in the Fourth Session shall be open to the following:
 - (a) Representatives of States;

(b) Entities, intergovernmental organizations and other entities which have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the United Nations;

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

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

(e) Observers from other relevant intergovernmental organizations;

(f) Observers from accredited non-governmental organizations and other major groups as identified in Agenda 21;

(g) Individual experts and consultants in the field of sustainable development invited by the United Nations;

(h) Officials of the United Nations;

(i) Other persons invited by the United Nations.

2. The Secretary-General of the United Nations or the Secretary-General of the Summit shall designate the officials of the United Nations assigned to attend the Fourth Session for the purpose of servicing it.

3. The public meetings of the Fourth Session shall be open to representatives of information media accredited by the United Nations at its discretion after consultation with the Government.

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide at its own expense, for as long as required for the Fourth Session, the necessary premises, including conference rooms, delegates' and interpreters' lounges, suitable office space, storage areas and other related facilities and requirements (as specified in annex II).¹⁸

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

3. The Government shall, at its own expense, furnish, equip and maintain in good repair all the aforesaid rooms and facilities in a manner the United Nations considers adequate for the effective conduct of the Fourth Session. The conference rooms shall be equipped for reciprocal simultaneous interpretation in the six languages of the United Nations and shall have facilities for sound recordings in those languages. Each interpretation booth shall have the capacity to switch to all seven channels (the "floor"—i.e.

the speaker—plus each language channel). The Arabic and Chinese booths require a system whereby the interpreters can override either the English or French booth so that the Arabic and Chinese interpreters can work into those languages without physically moving to either booth.

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

5. The Government shall install, at its own expense, within the Fourth Session area, a registration desk, restaurant facilities, a bank, a post office, telephone, telefax, and telex facilities, information and travel facilities, as well as a secretarial service centre, equipped in consultations with the United Nations, for the use of delegations to the Fourth Session on a commercial basis.

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

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

8. The Government shall bear the cost of all necessary utility services, including local telephone communications of the secretariat of the Fourth Session and its communications by telephone, telefax, telex and electronic communication system between the secretariat of the Fourth Session and the United Nations offices when such communications are made or authorized by, or on behalf of, the United Nations Secretary-General or the Secretary-General of the Summit, including official United Nations information cables between the site of the Fourth Session and United Nations Headquarters and the various United Nations information centres.

9. The Government shall bear the cost of the transport and insurance charges, from any established United Nations Office to the site of the Fourth Session and return, of all United Nations supplies and equipment required for the functioning of the Fourth Session. The United Nations shall determine the mode of shipment of such equipment and supplies.

10. Premises and facilities provided in accordance with this article may be made available, in an adequate manner, to the observers from the non-governmental organizations and other major groups referred to in article II, paragraph 1 (*f*) above, for the conduct of their activities relating to their contribution to the Fourth Session.

Article IV

MEDICAL FACILITIES

1. The Government, at its own expense, within the area of the Fourth Session shall provide medical facilities adequate for first aid in emergencies.
2. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital.

Article V

ACCOMMODATION

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

Article VI

TRANSPORT

1. The Government shall ensure the availability of adequate transportation for all participants at the Fourth Session and United Nations staff to and from the airport for three days before and two days after the Fourth Session as well as transportation to and from the principal hotels and the Session premises for the duration of the Fourth Session.
2. The Government, in consultation with the United Nations, shall provide at its expense an adequate number of cars with drivers for official use by the principal officers and the secretariat of the Fourth Session, as well as such other local transportation as is required by the secretariat in connection with the Fourth Session, including transportation to and from the airport and between principal hotels used by the officials of the United Nations Secretariat.

Article VII

POLICE PROTECTION

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

Article VIII

LOCAL PERSONNEL FOR THE FOURTH SESSION

1. The Government shall appoint an official who shall act as a liaison officer between the Government and the United Nations and shall be responsible, in consultation with the Secretary-General or the Secretary-

General of the Summit, for making the necessary arrangements for the Fourth Session as required under this Agreement.

2. The Government shall engage and provide at its own expense the local personnel required (see annex III) in addition to the United Nations staff:

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

(b) To reproduce and distribute the documents and press releases needed by the Fourth Session;

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

(d) To provide custodial and maintenance services for the equipment and premises made available in connection with the Fourth Session. A more detailed requirement for local personnel is specified in annex III.

3. The Government shall arrange at its own expense, at the request of the United Nations, for some of the local staff referred to in paragraph 2 above to be available before and after the closing of the Fourth Session, and to maintain such night-time services as may be required by the United Nations.

Article IX

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial obligations provided for elsewhere in this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the Fourth Session in Indonesia rather than at established United Nations Headquarters (New York). Such additional costs, which are provisionally estimated at US\$ 1,881,032, shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the Secretary-General to undertake preparatory visits to Indonesia and to attend the Fourth Session, as well as the costs of shipment of equipment and supplies not readily available locally. Arrangements for such travel and shipment shall be made by the secretariat of the Fourth Session in accordance with the Financial Regulations and Rules and Staff Regulations and Rules of the United Nations and its related administrative practices in regard to travel standards, baggage allowance, subsistence payment (per diem) and terminal expenses. The list of United Nations officials needed to service the Fourth Session and the related travel costs are provided respectively in annex I.

2. The Government shall, not later than 14 May 2002, deposit with the United Nations the sum of US\$ 1,881,032 representing the total estimated costs referred to in paragraph 1 of this article.

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

4. The deposit referred to in paragraph 2 above shall be used only to pay the obligations of the United Nations in respect of the Fourth Session.

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

Article X

LIABILITY

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

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

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

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

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

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the Convention"), to which Indonesia is a party, shall be applicable in respect of the Fourth Session. In particular,

the representatives of States referred to in article II, paragraph 1 (*a*) above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations, performing functions in connection with the Fourth Session referred to in article II, paragraphs 1 (*h*) and 2 above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention, and any experts on mission for the United Nations in connection with the Fourth Session referred to in article II, paragraph 1 (*g*), shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

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

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

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

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

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

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the premises of the Fourth Session shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United

Nations. The premises shall be inviolable for the duration of the Fourth Session, including the preparatory stage and winding up.

8. All persons referred to in article II above shall have the right to take out of Indonesia at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Indonesia in connection with the Fourth Session and to reconvert any such funds at the prevailing market rate.

Article XII

IMPORT DUTIES AND TAX

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

Article XIII

SETTLEMENT OF DISPUTES

Any dispute between the Government and the United Nations concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party to a tribunal of three arbitrators, one to be named by the Government, one to be named by the Secretary-General of the United Nations, and the third, who shall be the Chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. 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. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention. Furthermore, any dispute that involves a question regulated by the Convention on the Privileges and Immunities of the Specialized Agencies shall be dealt with in accordance with section 32 of that Convention.

Article XIV

FINAL PROVISIONS

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

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

SIGNED, this 14 day of May 2002, at United Nations Headquarters, New York.

For the United Nations:

[Signature]

Nitin DESAI

*Under-Secretary-General for
Economic and Social Affairs*

For the Government of Indonesia:

[Signature]

Ambassador Makmur WIDODO

*Permanent Representative of
Indonesia to the United Nations*

- (I) Exchange of letters between the United Nations and the Minister for Foreign Affairs of the Interim Administration of Afghanistan constituting an agreement regarding the establishment of a United Nations Assistance Mission in Afghanistan. Signed at New York on 9 April 2002 and at Kabul on 15 May 2002¹⁹

I

LETTER FROM THE UNITED NATIONS

9 April 2002

Excellency,

1. I have the honour to refer to paragraph 1 of resolution 1401 (2002) of 28 March 2002 by which the United Nations Security Council endorsed the establishment of a United Nations Assistance Mission in Afghanistan (UNAMA) with the mandate and structure laid out in the report of the Secretary-General of 18 March 2002 (S/2002/278).

2. In order to facilitate the fulfilment of the purposes of UNAMA, I propose that the Interim Administration, in the implementation of its obligations under Article 105 of the Charter of the United Nations, extend to UNAMA, its property, funds and assets and its members listed in paragraph 3 (a), (b) and (c) below the privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations, to which Afghanistan is a party (hereinafter referred to as “the Convention”), without reservation. Additional facilities as provided herein are also required for the contractors and their employees engaged by the United Nations or UNAMA to perform services exclusively for UNAMA and/or supply exclusively to UNAMA equipment provisions, supplies, materials and other goods in support of UNAMA (hereinafter referred to as “United Nations contractors”).

3. I propose, in particular, that the Interim Administration extend to:

(a) The Special Representative of the Secretary-General for Afghanistan, and other high-ranking members of UNAMA whose names shall be communicated to the Interim Administration, the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law;

(b) The officials of the United Nations assigned to serve with UNAMA, the privileges and immunities to which they are entitled under articles V and VII of the Convention. Locally recruited members of UNAMA shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in sections 18 (a), (b) and (c) of the Convention;

(c) Other persons such as United Nations military advisers and police advisers, the privileges and immunities accorded to experts performing missions for the United Nations under article VI of the Convention;

(d) United Nations contractors, other than local contractors, shall be accorded repatriation facilities in time of crisis and exemption from taxes in Afghanistan on the services provided to UNAMA, including corporate, income, social security and other similar taxes arising directly from the provision of such services.

4. The privileges and immunities necessary for the fulfilment of the functions of UNAMA also include:

- (i) Unrestricted freedom of entry and exit, without delay or hindrance, of its members and United Nations contractors, their property, supplies, equipment and spare parts and means of transport;
- (ii) Exemption of members of UNAMA holding United Nations laissez-passer from visa regulations and prompt issuance by the Interim Administration to United Nations contractors, free of charge and without any restrictions, of all necessary visas, licences or permits. For the purpose of entry or departure, members of UNAMA shall only be required to have a personal identity card issued by or under the authority of the Special Representative of the Secretary-General except in the case of first entry, when the United Nations laissez-passer or national passport shall be accepted in lieu of the said identity card;
- (iii) Unrestricted freedom of movement throughout the country of its members and United Nations contractors, their property, equipment and means of transport. UNAMA, its members, United Nations contractors and their vehicles, and aircraft shall use roads, bridges, canals, and other waters and airfields without the payment of dues, tolls, landing fees, parking fees, overflight fees, port fees and charges, including wharfage charges. However, exemption from charges which are in fact charges for services rendered will not be claimed;

- (iv) Prompt issuance by the Interim Administration of all necessary authorizations, permits and licences required for the importation or purchase of equipment, provisions, supplies, materials and other goods used in support of UNAMA, including in respect of importation or purchase by United Nations contractors, free of any restrictions and without payment of duties, charges or taxes including value-added tax;
- (v) Acceptance by the Interim Administration of permits or licences issued by the United Nations for the operation of vehicles used in support of UNAMA; acceptance by the Interim Administration, or where necessary validation by the Interim Administration, free of charge and without any restriction, of licences and certificates already issued by appropriate authorities in other States in respect of aircraft used in support of UNAMA; prompt issuance by the Interim Administration, free of charge and without any restrictions, of necessary authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft used in support of UNAMA;
- (vi) Right to fly the United Nations flag and place distinctive United Nations identification on premises, vehicles, aircraft used in support of UNAMA;
- (vii) Right to unrestricted communication by radio, satellite or other forms of communication with United Nations Headquarters and between the various offices and to connect with the United Nations radio and satellite network, as well as by telephone, facsimile and other electronic data systems. The frequencies on which the communication by radio will operate shall be decided upon in cooperation with the Interim Administration;
- (viii) Right to access radio and television production and broadcast facilities under the control of the Interim Administration to disseminate information relating to its mandate, at agreed times in the programme grid at no air time cost to UNAMA; and
- (ix) Right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNAMA. The Interim Administration shall be informed of the nature of such arrangements, and shall not interfere with or apply censorship to the mail of UNAMA or its members.

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

6. The Interim Administration shall provide without cost to UNAMA and in agreement with UNAMA such areas for headquarters or other premises as may be necessary for the conduct of the operational and administrative activities of UNAMA. Without prejudice to the fact that all such premises remain Afghan territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations.

7. The Interim Administration undertakes to assist UNAMA as far as possible in obtaining equipment, provisions, supplies, materials and other goods and services from local sources required for its subsistence and operations. In respect of equipment, provisions, supplies, materials and other goods purchased locally by UNAMA or by United Nations contractors for the official and exclusive use of UNAMA, the Interim Administration shall make appropriate administrative arrangements for the remission or return of any excise or tax payable as part of the price. The Interim Administration shall exempt UNAMA and United Nations contractors from general sales taxes in respect of all official local purchases. In making purchases on the local market, UNAMA shall, on the basis of observations made and information provided by the Interim Administration in that respect, avoid any adverse effect on the local economy.

8. The Interim Administration shall take all appropriate measures to ensure the safety and security of UNAMA and its members. The Interim Administration will provide UNAMA, where necessary and upon its request, with maps and other information, which may be useful in facilitating and protecting the security of UNAMA in the conduct of its tasks and movements. Upon the request of the Special Representative of the Secretary-General, armed escorts will be provided to protect the members of the United Nations during the exercise of their functions. In paragraph 5 of resolution 1401 (2002), the Security Council called on all Afghan parties to cooperate with UNAMA in the implementation of its mandate and to ensure the security and freedom of movement of a secure environment and demonstrate respect for human rights.

9. The Interim Administration shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to UNAMA or its members which, if committed in relation to the forces of the Interim Administration or against the local civilian population, would have rendered such acts liable to prosecution.

10. It is further understood that paragraphs 5-11 inclusive of General Assembly resolution 52/247 of 26 June 1998 apply in respect of third-party claims against the United Nations resulting from or attributable to UNAMA or to the activities of its members.

11. Any dispute between the United Nations and the Interim Administration concerning the interpretation or application of this Agreement, except for a dispute that is regulated by section 30 of the Convention or section 32 of the Convention on the Privileges and Immunities of the

Specialized Agencies, shall be resolved by negotiations or other agreed mode of settlement. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of either party for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Interim Administration and the third, who shall be 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.

12. 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 Afghanistan on the status of UNAMA and its members with immediate effect.

13. I would like to take this opportunity to express my sincere gratitude to you and the Interim Administration of Afghanistan for the support provided to the United Nations Special Mission to Afghanistan (UNSM) and subsequently to UNAMA in facilitating their tasks.

(Signed) Lakhdar BRAHIMI
*Special Representative of the Secretary-General
for Afghanistan*

II

LETTER FROM THE INTERIM ADMINISTRATION OF THE MINISTRY OF FOREIGN AFFAIRS OF AFGHANISTAN TO THE UNITED NATIONS

(Unofficial translation)

15 May 2002

Dear Sir,

In reference to your letter dated 9 April 2002, respectfully, we would like to communicate the following:

The Ministry of Foreign Affairs of Afghanistan agrees with the provisions of your letter dated 9 April 2002.

(Signed) Dr. ABDULLAH
Minister of Foreign Affairs

- (m) Agreement between the United Nations and the Government of the Democratic Republic of East Timor concerning the status of the United Nations Mission of Support in East Timor. Done at Dili on 20 May 2002²⁰

I. DEFINITIONS

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

(a) “UNMISSET” means the United Nations Mission of Support in East Timor, established in accordance with Security Council resolution 1410 (2002) of 17 May 2002 with the mandate described in the resolution based on the recommendations contained in the Secretary-General’s report of 17 April 2002 (S/2002/432). UNMISSET shall consist of:

- (i) The “Special Representative” appointed by the Secretary-General of the United Nations with the consent of the Security Council. Any reference to the Special Representative in this Agreement shall, except in paragraph 26, include any member of UNMISSET to whom he delegates a specified function or authority;
- (ii) A “civilian component” consisting of United Nations officials and of other persons assigned by the Secretary-General to assist the Special Representative or made available by participating States to serve as part of UNMISSET;
- (iii) A “military component” consisting of military and civilian personnel made available to UNMISSET by participating States at the request of the Secretary-General;

(b) A “member of UNMISSET” means the Special Representative of the Secretary-General and any member of the civilian or military components;

(c) “the Government” means the Government of the Democratic Republic of East Timor;

(d) “the territory” means the territory of the Democratic Republic of East Timor (hereinafter referred to as “East Timor”);

(e) A “participating State” means a State providing personnel, services, equipment, provisions, supplies, material and other goods to any of the above-mentioned components of UNMISSET;

(f) “the Convention” means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946;

(g) “contractors” means persons, other than members of UNMISSET, engaged by the United Nations, including juridical as well as natural per-

sons and their employees and sub-contractors, to perform services and/or supply equipment, provisions, supplies, materials and other goods in support of UNMISET activities. Such contractors shall not be considered third-party beneficiaries to this Agreement;

(h) “vehicles” means civilian and military vehicles in use by the United Nations and operated by members of UNMISET and contractors in support of UNMISET activities;

(i) “vessels” means civilian and military vessels in use by the United Nations and operated by members of UNMISET, participating States and contractors in support of UNMISET activities;

(j) “aircraft” means civilian and military aircraft in use by the United Nations and operated by members of UNMISET, participating States and contractors, in support of UNMISET 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 UNMISET or any member thereof or to contractors apply in East Timor, including the territory of Oecussi and the Atauro Island as well.

III. APPLICATION OF THE CONVENTION

3. UNMISET, 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.

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

IV. STATUS OF UNMISET

5. UNMISET and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. UNMISET 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. Without prejudice to the mandate of UNMISET and its international status:

(a) The United Nations shall ensure that UNMISET shall conduct its operation in East Timor with full respect for the principles and rules of the

international conventions applicable to the conduct of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977 and the UNESCO Convention on the Protection of Cultural Property in the event of armed conflict of 14 May 1954;

(b) The Government undertakes to treat at all times the military personnel of UNMISET with full respect for the principles and rules of the international conventions applicable to the treatment of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977.

UNMISET and the Government shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and rules of the above-mentioned international instruments.

7. The Government undertakes to respect the exclusively international nature of UNMISET.

United Nations flag, markings and identification

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

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

Communications

10. UNMISET shall enjoy the facilities in respect of 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 tasks. 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.

11. Subject to the provisions of paragraph 10:

(a) UNMISET shall have the right to install, in consultation with the Government, and operate United Nations radio stations to disseminate information relating to its mandate. UNMISET shall also have the right to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory of East Timor with each other and with United Nations offices in other countries, and to exchange telephone, voice, facsimile and other electronic data with the United Nations global telecommunications network. The United Nations radio stations and telecommunications services shall be operated

in accordance with the International Telecommunication Convention and Regulations and the relevant frequencies on which any such station may be operated shall be decided upon in cooperation with the Government;

(b) UNMISSET shall enjoy, within the territory of East Timor, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and to establish the necessary facilities for maintaining such communications within and between premises of UNMISSET, 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 telephone, facsimile and other electronic data 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 telephone, facsimile and other electronic data shall be charged at the most favourable rate;

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

Travel and transport

12. UNMISSET and its members as well as contractors shall enjoy, together with their vehicles, including vehicles of contractors used exclusively in the performance of their services for UNMISSET, vessels, aircraft and equipment, freedom of movement without delay throughout East Timor. That freedom shall, with respect to large movements of personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within East Timor, be co-coordinated with the Government. The Government undertakes to supply UNMISSET, where necessary, with maps and other information, including locations of minefields and other dangers and impediments, which may be useful in facilitating its movements.

13. Vehicles shall not be subject to registration or licensing by the Government provided that all such vehicles shall carry third-party insurance if required by relevant legislation.

14. UNMISSET and its members as well as contractors, together with their vehicles, including vehicles of contractors used exclusively in the performance of their services for UNMISSET, vessels and aircraft, may use roads, bridges, canals and other waters, port facilities, airfields and airspace without the payment of dues, tolls or charges, including wharfage and compulsory pilotage charges. However, UNMISSET will not claim

exemption from charges which are in fact charges for services rendered, it being understood that such charges for services rendered shall be charged at the most favourable rates.

Privileges and immunities of UNMISET

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

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

(b) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of UNMISET, but not of locally recruited personnel. 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 UNMISET, 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, fuel and other goods which are for the exclusive and official use of UNMISET 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, fuel and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of East Timor or to an entity nominated by them.

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

V. FACILITIES FOR UNMISET AND ITS CONTRACTORS

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

16. The Government of East Timor shall provide without cost to UNMISET and in agreement with the Special Representative such areas

for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNMISET. Without prejudice to the fact that all such premises remain East Timor territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such United Nations premises. Where United Nations troops are co-located with military personnel of the host country, a permanent, direct and immediate access by UNMISET to those premises shall be guaranteed.

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

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

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

Provisions, supplies and services, and sanitary arrangements

20. The Government agrees to grant expeditiously all necessary authorizations, permits and licences required for the importation and exportation of equipment, provisions, supplies, fuel, materials and other goods exclusively used in support of UNMISET, including in respect of importation and exportation by contractors, free of any restrictions and without the payment of duties, charges or taxes including value-added tax.

21. The Government undertakes to assist UNMISET as far as possible in obtaining equipment, provisions, supplies, fuel, materials and other goods and services from local sources required for its subsistence and operations. In respect of equipment, provisions, supplies, materials and other goods and services purchased locally by UNMISET or by contractors for the official and exclusive use of UNMISET, the Government shall make appropriate administrative arrangements for the remission or return of any excise or tax payable as part of the price. The Government shall exempt UNMISET and contractors from general sales taxes in respect of all local purchases for official use. In making purchases on the local market, UNMISET shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

22. For the proper performances of the services provided by contractors, other than East Timor nationals resident in East Timor, in support of UNMISSET, the Government agrees to provide contractors with facilities concerning their entry into and departure from East Timor as well as their repatriation in time of crisis. For this purpose, the Government shall promptly issue to contractors, free of charge and without any restrictions, all necessary visas, licences or permits. Contractors, other than East Timor nationals residing in East Timor, shall be accorded exemption from taxes in East Timor on the services provided to UNMISSET, including corporate, income, social security and other similar taxes arising directly from the provisions of such services.

23. UNMISSET 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

24. UNMISSET 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 UNMISSET and to accelerate the process of such recruitment.

Currency

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

VI. STATUS OF THE MEMBERS OF UNMISSET

Privileges and immunities

26. The Special Representative, the Commander of the military component of UNMISSET, 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.

27. Officials of the United Nations assigned to the civilian component to serve with UNMISSET, as well as United Nations Volunteers who shall be assimilated thereto, remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

28. Military observers, United Nations civilian police advisers and civilian personnel other than United Nations officials whose names are for the purpose notified to the Government by the Special Representative shall

be considered as experts on mission within the meaning of article VI of the Convention.

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

30. Unless otherwise specified in the present Agreement, locally recruited personnel of UNMISSET shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in section 18 (a), (b) and (c) of the Convention.

31. Members of UNMISSET 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 East Timor. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

32. Members of UNMISSET shall have the right to import free of duty their personal effects in connection with their arrival in East Timor. They shall be subject to the laws and regulations of East Timor governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in East Timor with UNMISSET. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNMISSET, including the military component, upon prior written notification. On departure from East Timor, members of UNMISSET 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 UNMISSET.

33. 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 East Timor by the members of UNMISSET, in accordance with the present Agreement.

Entry, residence and departure

34. The Special Representative and members of UNMISSET shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from East Timor.

35. The Government of East Timor undertakes to facilitate the entry into and departure from East Timor of the Special Representative and members of UNMISSET and shall be kept informed of such movement. For that purpose, the Special Representative and members of UNMISSET shall be exempt from passport and visa regulations and immigration inspection and restrictions as well as payment of any fees or charges on entering into or departing from East Timor. They shall also be exempt from any

regulations governing the residence of aliens in East Timor, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in East Timor.

36. For the purpose of such entry or departure, members of UNMISSET shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Special Representative or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 37 of the present Agreement, except in the case of first entry, when the United Nations laissez-passer, national passport or personal identity card issued by the United Nations or appropriate authorities of a participating State shall be accepted in lieu of the said identity card.

Identification

37. The Special Representative shall issue to each member of UNMISSET before or as soon as possible after such member's first entry into East Timor, as well as to all locally recruited personnel and contractors, a numbered identity card, showing the bearer's name and photograph. Except as provided for in paragraph 36 of the present Agreement, such identity card shall be the only document required of a member of UNMISSET.

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

Uniforms and arms

39. Military members and the United Nations civilian police advisers of UNMISSET shall wear, while performing official duties, 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 UNMISSET may be authorized by the Special Representative at other times. Military members and civilian police advisers of UNMISSET and United Nations Security Officers designated by the Special Representative may possess and carry arms while on official duty in accordance with their orders. Those carrying weapons while on official duty other than those undertaking close protection duties must be in uniform at that time.

Permits and licences

40. 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 UNMISSET, including locally recruited personnel, of any UNMISSET vehicles and for the practice of any profession or occupation in connection with the functioning of UNMISSET, provided that no permit to drive a vehicle shall be issued to any person who is not already in possession of an appropriate and valid licence.

41. The Government agrees to accept as valid, and where necessary to validate, free of charge and without any restrictions, licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by contractors exclusively for UNMISSET. Without prejudice to the foregoing, the Government further agrees to grant expeditiously, free of charge and without any restrictions, necessary authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels.

42. Without prejudice to the provisions of paragraph 39, 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 UNMISSET for the carrying or use of firearms or ammunition in connection with the functioning of UNMISSET.

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

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

44. The military police of UNMISSET shall have the power of arrest over the military members of UNMISSET. 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 43 above may take into custody any other person on the premises of UNMISSET. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

45. Subject to the provisions of paragraphs 26 and 28, officials of the Government may take into custody any member of UNMISSET:

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

(b) When such a member of UNMISSET 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 UNMISSET, whereafter the provisions of paragraph 55 shall apply *mutatis mutandis*.

46. When a person is taken into custody under paragraph 44 or paragraph 45 (b), UNMISSET 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.

47. UNMISSET and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 44-46.

Safety and security

48. The Government shall take all appropriate measures to ensure the safety and security of members of UNMISSET. In particular, it shall take all appropriate steps to protect members of UNMISSET, their equipment and premises, from attack or any action that prevents them from discharging their mandate. This is without prejudice to the fact that all premises of UNMISSET are inviolable and subject to the exclusive control and authority of the United Nations.

49. If members of UNMISSET are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

50. The Government shall establish the following acts as crimes under its national law, and make them punishable by appropriate penalties taking into account their grave nature:

(a) A murder, kidnapping or other attack upon the person or liberty of any member of UNMISSET;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any member of UNMISSET likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such attack; and

(e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack.

51. The Government shall establish its jurisdiction over the crimes set out in paragraph 50 above, when the crime was committed in its territory and the alleged offender, other than a member of UNMISSET, is present in its territory, unless it has extradited such person to the State

of nationality of the offender, the State of his habitual residence if he is a stateless person, or the State of the nationality of the victim.

52. The Government shall ensure the prosecution of persons accused of acts described in paragraph 50 above as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNMISSET or its members, which, if committed in relation to the forces of the Government or against the local civilian population, would have rendered such acts liable to prosecution.

53. Upon the request of the Special Representative of the Secretary-General, the Government shall provide such security as necessary to protect UNMISSET, its property and members during the exercise of their functions.

Jurisdiction

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

55. Should the Government consider that any member of UNMISSET 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 26:

(a) If the accused person is a member of the civilian component or a civilian member of the military component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement the question shall be resolved as provided in paragraph 61 of the present Agreement;

(b) Military members of the military component of UNMISSET 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 East Timor.

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

(a) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 59 of the present Agreement shall apply;

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Rep-

representative certifies that a member of UNMISET 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 inability, but for no more than ninety days. Property of a member of UNMISET that is certified by the Special Representative to be needed by the defendant for the fulfilment 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 UNMISET 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

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

VII. LIMITATION OF LIABILITY OF THE UNITED NATIONS

58. Third-party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to it, except for those arising from operational necessity, and which cannot be settled through the internal procedures of the United Nations, shall be settled by the United Nations in the manner provided for in paragraph 59 of the present Agreement, provided that the claim is submitted within six months following the occurrence of the loss, damage or injury, or, if the claimant did not know or could not reasonably have known of such loss or injury, within six months from the time he/she had discovered the loss or injury, but in any event not later than one year after the termination of the mandate of the operation. Upon determination of liability as provided in this Agreement, the United Nations shall pay compensation within such financial limitations as were approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII. SETTLEMENT OF DISPUTES

59. Except as provided in paragraph 61, any dispute or claim of a private law character not resulting from the operation necessity of UNMISET, to which UNMISET or any member thereof is a party and over which the courts of East Timor do not have jurisdiction because of any provision of the present Agreement, shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the

President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final. The awards of the commission shall be notified to the parties and, if against a member of UNMISSET, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

60. 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.

61. All other disputes between UNMISSET 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.

62. All differences between the United Nations and the Government of East Timor 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

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

X. LIAISON

64. The Special Representative/the Force Commander and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

XI. MISCELLANEOUS PROVISIONS

65. Wherever the present Agreement refers to privileges, immunities and rights of UNMISSET and to the facilities East Timor undertakes to provide to UNMISSET, the Government shall have the ultimate responsibil-

ity for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

66. The present Agreement shall enter into force upon signature by or for the Secretary-General of the United Nations and the Government.

67. The present Agreement shall remain in force until the departure of the final element of UNMISSET from East Timor, except that:

(a) The provisions of paragraphs 54 and 61 and 62 shall remain in force;

(b) The provisions of paragraphs 58 and 59 shall remain in force until all claims made in accordance with the provision of paragraph 58 have been settled.

IN WITNESS WHEREOF, the undersigned being duly authorized plenipotentiary of the Government and duly appointed representative of the United Nations have, on behalf of the Parties, signed the present Agreement.

DONE at Dili on the 20th of May of the year 2002.

*For the Government of the
Democratic Republic
of East Timor:*
[Signature]
Mari Bim Amude ALKATIRI
Prime Minister

For the United Nations:
[Signature]
Sergio VIEIRA DE MELLO
Special Representative of the
Secretary-General in East Timor

(n) Supplemental Arrangement between the United Nations Mission of Support in East Timor and the Government of the Democratic Republic of East Timor on the transfer of police responsibilities to the East Timor Police Service. Signed on 20 May 2002²¹

Recalling that, in United Nations Security Council resolution 1410 (2002) of 17 May 2002, the mandate of the United Nations Mission of Support in East Timor (UNMISSET) is, inter alia, to provide interim law enforcement and public security and to assist in the development of the East Timor Police Service,

Acknowledging that, in his report of 17 April 2002 (S/2002/432), the Secretary-General of the United Nations indicated, inter alia, that:

(a) The East Timor Police Service (ETPS) is expected ultimately to number 2,830 officers, but at the time of independence will total 1,800 serving officers;

(b) Until the final handover is undertaken, the international civilian police component of UNMISSET (UNPOL) and ETPS would perform as a joint police service under the command of the UNPOL Commissioner

reporting to the Special Representative of the Secretary-General in East Timor; and

(c) The final endorsement of the ETPS organizational structure and handover of command from the UNPOL Commissioner to the East Timorese Commissioner is expected to take place in January 2004,

Reaffirming commitment to the jointly developed ETPS Development Plan endorsed by the Special Representative of the Secretary-General and the Chief Minister of the East Timor Public Administration,

Emphasizing that development of the East Timorese Police Service takes place through a gradual district-by-district and unit-by-unit assumption of executive responsibility for routine policing by the Government of East Timor from the United Nations,

Affirming respect for the sovereignty of the independent country of East Timor,

Noting that, under the structure of the Government of East Timor, there will be a Minister with responsibility for the police service of the country, and that cooperation between the police service and relevant Ministry will be important for the proper functioning of the police service,

Therefore,

UNMISSET and the Government of East Timor have agreed, in pursuance of Security Council resolution 1410 (2002), on the following arrangements, supplemental to the Status of Forces Agreement, to provide support in maintaining law and order in East Timor and the development of East Timor Police Service.

The Parties hereby agree as follows:

1. *Definitions*

(a) “Command for Routine Policing” means basic police functions, including crime prevention and detection, traffic police, crowd management and community policing, and to attend to the special needs of vulnerable persons and victims of domestic violence;

(b) “District/Unit” means an administrative section of police operations within the single chain of command, such as a district, or a discrete administrative unit, including, for example, the Police College, Special Police Unit, or Marine Unit;

(c) “District/Unit Handover” means that following the United Nations official certification of East Timorese police officers and the United Nations official accreditation of the District/Unit, Operational Command and Control for routine policing of that District/Unit will be transferred to an East Timorese Commanding Officer, within the single United Nations chain of command;

(d) “East Timor” means the Democratic Republic of East Timor;

(e) “East Timorese Commanding Officer” means the East Timorese officer who is co-located with the UNPOL Commanding Officer within the scope of on-the-job training and is certified to assume responsibility for Command for Routine Policing within a District/Unit upon District/Unit Handover;

(f) “East Timorese Commissioner” means the East Timorese senior police officer who is co-located with the UNPOL Commissioner within the scope of on-the-job training and has attained the necessary certification for appointment under clause 11.2 of United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 2001/22 on the Establishment of the East Timor Police Service and who will eventually assume Operational Command and Control of the ETPS upon Final Handover;

(g) “Emergency Situation” means a situation in which there is a pervasive threat to basic law and order, namely serious potential or effective threat to life, injury to people, damage to property, major riots and widespread looting, or as determined by the UNPOL Commissioner in consultation with the Special Representative of the Secretary-General and Prime Minister (or Minister), and intervention is required to protect individuals’ rights and to maintain or restore law and order;

(h) “ETPS” means the East Timor Police Service established by clause 2 of UNTAET Regulation No. 2001/22 on the Establishment of the East Timor Police Service;

(i) “ETPS Development Plan” means the strategic plan for the development of the ETPS, endorsed by the United Nations and the Second Transitional Government of East Timor, and which describes District/Unit Handover;

(j) “Final Handover” means the formal transfer of executive authority for the maintenance of East Timor’s law and order from the United Nations to the Government, whereby the East Timorese Commissioner assumes responsibility for Operational Command and Control of the ETPS;

(k) “General Policy” refers to policy matters relating to the police service, excluding Operational Command and Control, and including the following:

- (i) Budgetary matters and decisions in respect of the police within the authority of the Government of East Timor; and
- (ii) The matters set out in the following sections of UNTAET Regulation No. 2001/22 on the Establishment of the East Timor Police Service:
 - (1) Boundaries of police districts (section 13.1);
 - (2) Location of police stations and substations in districts (section 13.3);
 - (3) Organizational structure of the ETPS (section 13.4);

- (4) Purchase of firearms, ammunition and explosives (section 14.1); and
- (5) Approval for police cadet training courses conducted outside East Timor (section 16.1);

(l) “Government” refers to the Government of the Democratic Republic of East Timor;

(m) “Minister” means the Minister responsible for the maintenance of law and order, the Police Service and all matters entrusted to him or her under UNTAET Regulation No. 2001/22 on the Establishment of the East Timor Police Service;

(n) “Operational Command and Control” is the authority until Final Handover to make decisions and to instruct United Nations and East Timorese police officers, under a single chain of command, concerning day-to-day operations and internal command policies of the police, and includes:

- (i) Deployment, transfer and movement of police personnel;
- (ii) Description of duties to be performed;
- (iii) Manner of performance of duties;
- (iv) Investigation of crime and the arrest of persons in accordance with the law;
- (v) Discipline of members;
- (vi) Management of law enforcement activities;
- (vii) Implementation and enforcement of the items stated in section 6 of UNTAET Regulation No. 2001/22 on the Establishment of the East Timor Police Service, which sets out the general competencies and duties of the ETPS;

(o) The “Special Representative of the Secretary-General” is the person appointed by the Secretary-General as his Special Representative in East Timor for the mandate of UNMISSET;

(p) “UNMISSET” is the United Nations Mission of Support in East Timor mandated by Security Council resolution 1410 (2002);

(q) “UNPOL” means the international police component of UNMISSET;

(r) “UNPOL Commanding Officer” means the UNPOL officer who has Operational Command and Control responsibilities in respect of a District/Unit, prior to District/Unit Handover;

(s) “UNPOL Commissioner” means the person appointed as head of UNPOL in accordance with the mandate of UNMISSET.

2. *United Nations support for maintenance of internal security*

The United Nations shall provide support to the Government in the maintenance of internal security by assuming responsibility for law and

order in East Timor, in accordance with the terms and conditions set forth in this Arrangement.

3. *Powers, duties and responsibilities*

3.1 *Powers, duties and responsibilities of the Minister*

The Minister shall have responsibility for General Policy and may issue General Policy instructions consistent with international standards that relate to the police service.

In emergency situations, the Prime Minister (or Minister) may call on the Special Representative of the Secretary-General to give immediate consideration to request necessary police action. The Special Representative of the Secretary-General shall give this request the highest priority.

In such situations, the Prime Minister may also request that relevant instructions be issued to the police by the Special Representative of the Secretary-General jointly with the Prime Minister.

3.2 *Powers, duties and responsibilities of the UNPOL Commissioner*

The UNPOL Commissioner shall:

- (a) Have responsibility for Operational Command and Control;
- (b) Have responsibility for training of police cadets, including the content of training courses in the Police Academy, in accordance with laws and regulations;
- (c) Report directly to the Special Representative of the Secretary-General and only receive instructions from the Special Representative of the Secretary-General;
- (d) Ensure that the matters that require the approval of, or receipt by, the Minister are promptly brought to his or her attention;
- (e) Promptly submit a copy of the daily, weekly and monthly police situation reports to the Minister;
- (f) Promptly submit special reports to the Minister on significant security incidents and significant developments in the law and order situation;
- (g) Consult the East Timorese Commissioner on all Operational Command and Control matters and facilitate such consultation, advisory, countersigning and representational requirements as provided for in this Arrangement;
- (h) Nominate a senior UNPOL officer to be appointed by the Special Representative of the Secretary-General to act as UNPOL Commissioner in his or her absence;
- (i) Apart from orders and instructions which are purely internal United Nations administrative matters, consult the East Timorese Com-

missioner prior to disseminating orders and instructions concerning day-to-day operations and internal command policies for the police;

(j) Ensure that the East Timorese Commissioner is afforded appropriate opportunity for joint representation in national and international forums.

3.3 *Powers, duties and responsibilities of the East Timorese Commissioner*

The East Timorese Commissioner shall:

(a) In accordance with the consultation and advisory mechanisms described in this Arrangement:

- (i) Act in support of the UNPOL Commissioner in the overall Operational Command and Control responsibility concerning ETPS; and
- (ii) Have responsibility for the selection and recruitment of police cadets, in accordance with relevant laws and regulations;

(b) Ensure that the UNPOL Commissioner is afforded appropriate opportunity for joint representation in national or international forums including, where necessary, in ministerial-level meetings;

(c) Following District/Unit Handover, promptly bring all Operational Command and Control matters to the attention of the UNPOL Commissioner, for his appropriate action; and

(d) On Final Handover, assume responsibility for all Operational Command and Control responsibilities of the ETPS.

3.4 *Powers, duties and responsibilities of UNPOL Commanding Officers*

A UNPOL Commanding Officer shall, prior to District/Unit Handover:

(a) Under the powers delegated by the UNPOL Commissioner, assume Operational Command and Control responsibilities and provide on-the-job training for ETPS officers, in respect of the District/Unit;

(b) Consult with his or her co-located East Timorese Commanding Officer in the District/Unit on all Operational Command and Control matters in respect of the District/Unit;

(c) Consult with his or her co-located East Timorese Commanding Officer prior to disseminating orders and instructions concerning day-to-day operations and internal command policies of the District/Unit; and

(d) Report to the UNPOL Commissioner.

3.5 *Powers, duties and responsibilities of East Timorese Commanding Officers*

An East Timorese Commanding Officer shall, following District/Unit Handover:

(a) Under the powers delegated by the UNPOL Commissioner, assume Command for Routine Policing responsibilities, in respect of the District/Unit;

(b) Consult with his or her co-located UNPOL officer in the District/Unit, as appropriate, on Operational Command and Control matters in respect of the District/Unit;

(c) Inform his or her co-located UNPOL officer in the District/Unit of developments that may give rise to an Emergency Situation; and

(d) Report to the UNPOL Commissioner through the East Timorese Commissioner.

4. *Handover of responsibilities*

4.1 The United Nations shall conduct District/Unit Handover gradually, in accordance with the ETPS Development Plan.

4.2 District/Unit Handover shall not affect the UNPOL Commissioner's responsibility for Operational Command and Control within the single chain of command.

4.3 Following District/Unit Handover, an East Timorese Commanding Officer, and all East Timorese officers under his or her command, while reporting to the UNPOL Commissioner through the East Timorese Commissioner, shall at all times remain under the single chain of command of the UNPOL Commissioner.

4.4 Following a District/Unit Handover all orders or decisions relating to the District/Unit on matters other than for routine policing shall be immediately effective upon signature of the East Timorese Commanding Officer, and countersigned by the co-located UNPOL officer in the District/Unit.

4.5 Following District/Unit Handover, UNPOL officers shall not have Operational Command and Control responsibilities for routine policing, but will advise the East Timorese Commanding Officers.

4.6 At all times, UNPOL officers shall only receive instructions from superior UNPOL officers.

4.7 The UNPOL Commissioner shall conduct Final Handover on completion of the ETPS Development Plan and in accordance with a written instruction of the Special Representative of the Secretary-General.

5. *Consultation and advisory mechanisms*

5.1 The United Nations shall ensure that the East Timorese Commissioner, East Timorese Commanding Officers and the Government are informed and consulted in all matters relating to the police.

5.2 The UNPOL Commissioner and the East Timorese Commissioner shall meet with the Minister when required but not less than weekly, to share information on matters relating to general police operations and the overall law and order situation.

5.3 The Special Representative of the Secretary-General shall meet regularly with the Prime Minister to discuss the United Nations support to the Government for the maintenance of law and order in East Timor.

5.4 The UNPOL Commissioner and the East Timorese Commissioner shall be invited to attend jointly meetings or discussions of the Government, including ministerial-level meetings, concerning the maintenance of law and order in East Timor and development of the ETPS.

5.5 The UNPOL Commissioner shall consider advice given by the Minister with respect to important law and order issues and shall inform the Minister of any action taken.

5.6 The UNPOL Commissioner is not authorized to receive instructions relating to Operational Command and Control matters from the Minister or from any other elected or appointed official of the Government.

5.7 The UNPOL Commissioner shall be available to the Minister when requested to discuss an emergency law and order situation and give due consideration to a proposed course of action.

5.8 The United Nations and the Government shall provide a dedicated telephone line and mobile telephones solely for use in emergency situations by the UNPOL Commissioner, the Special Representative of the Secretary-General and the Minister.

6. *Settlement of disputes*

Without prejudice to the settlement of dispute clause under the Status of Forces Agreement, the interpretation and application of this arrangement shall be settled by negotiations.

7. *Amendment, review and termination*

7.1 This arrangement may be amended by written agreement between the Parties.

7.2 This arrangement shall be reviewed by the Parties one year after its entry into force.

7.3 This arrangement shall enter into force on 20 May 2002 and shall remain in force until 30 June 2004.

8. *Execution*

SIGNED this 20th day of May in the year 2002.

*On behalf of the Government of the
Democratic Republic of East Timor:*
[Signature]
Mari Bim Amude ALKATIRI
Prime Minister

On behalf of UNMISSET:
[Signature]
Sergio VIEIRA DE MELLO
Special Representative of the
Secretary-General in East Timor

- (o) Arrangements between the United Nations and the Government of the Federal Republic of Germany regarding the Ministerial Conference on Ageing of the Economic Commission for Europe, to be held in Berlin from 11 to 13 September 2002. Signed at Geneva on 8 and 17 July 2002²²

I

LETTER FROM THE UNITED NATIONS

G/LE-311/21 [GERMANY]

8 July 2002

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 Ministerial Conference on Ageing, of the Economic Commission for Europe, to be held, at the invitation of the Government, in Berlin from 11 to 13 September 2002.

“Arrangements between the United Nations and the Government of the Federal Republic of Germany regarding the Ministerial Conference on Ageing, of the Economic Commission for Europe, to be held in Berlin from 11 to 13 September 2002

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

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

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

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

(c) To pay to the ECE staff members, on arrival in Berlin, 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 Conference, together with terminal expenses of up to 108 United States dollars per traveller, in convertible currency.

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

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

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

(b) Experts on mission attending this Conference in pursuance of paragraph 1 of this Arrangement shall enjoy the privileges and immunities under articles VI and VII of the Convention on the Privileges and Immunities of the United Nations;

(c) All other participants attending this Conference in pursuance of paragraph 1 of this Arrangement shall enjoy the privileges and immunities of experts on mission under article VI of the Convention on the Privileges and Immunities of the United Nations;

(d) The personnel provided by the Government and all other persons performing functions in connection with the Conference shall enjoy the status necessary for the independent exercise of their functions in connection with the Conference;

(e) All persons shall have the right of entry into and exit from the Federal Republic of Germany and no impediment shall be imposed on their transit to and from the Conference area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted to all those invited to the Conference free of charge, as speedily as possible and no later than two weeks before the date of the opening of the Conference. If in exceptional cases the application of a visa is not made at least three weeks before the opening of the Conference, the visa shall be granted when possible within three days from receipt of the application;

(f) A list with the names and professional functions of all participants in this Conference indicating their status will be communi-

cated to the host authorities by the Secretariat at the earliest possible opportunity.

“6. For the purpose of the application of the Convention, the Conference premises shall be deemed to constitute premises of the United Nations and shall be inviolable for the duration of the Conference.

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

“8. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, will, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator, or if the first two arbitrators do not, within three months of the appointment or nomination of the second one of them, appoint the Chairman, 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 enters into force on the date of your reply and shall remain in force for the duration of the Conference and for such additional period as is necessary for its preparation and winding up.

(Signed) Sergei ORDZHONIKIDZE
Director-General
United Nations Office at Geneva

ANNEX

Staff and facilities necessary for the organization of the ECE Ministerial Conference on Ageing Berlin, 11-13 September 2002

I. SPACE FACILITIES (provided by the Government)

- A conference room with a seating capacity for approximately 280 participants, equipped for simultaneous interpretation into English, French and Russian; the interpretation equipment should be of a standard similar to that of the Palais des Nations, United Nations Office at Geneva (UNOG), with a sufficient number of microphones to enable all participants to join in the discussions from their seats. The interpretation booths should be well insulated;
- The conference room should be equipped with a screen, projector and PowerPoint equipment;
- A second conference room seating at table 60, equipped for simultaneous interpretation into English/French/Russian (Europa sala), equipped with a screen, projector, and PowerPoint (to allow drafting changes to be typed in and projected on the screen);
- A small conference room to be used by the Bureau either as an office or for meeting other delegations, installed with telephone lines and a PC/printer;
- A small conference room to be used by the Executive Secretary for meeting with delegations, installed with telephone line;
- A small conference room for small NGO meetings in the same area of the Conference Facility installed with two PCs/printers and telephone lines and a Xerox machine;
- A small conference room for the ECE/UNOG secretariat equipped with four PCs with Internet access, telephone with international coverage, Xerox machine and fax;
- A room/office with a seating capacity large enough to accommodate all NGO representatives, i.e. 70, equipped with video transmission (picture frame) to the plenary hall, equipped with three PCs/printers and telephones and Xerox machine;
- One office for the ECE/UNOG Conference Services secretariat, equipped with telephone, two PCs/printers with Internet access, fax and Xerox machine;
- Office for the local staff, with desks and equipment (see below);
- Registration desk near the conference room;
- Exhibition space and tables near the conference room for ECE and NGOs.

II. EQUIPMENT AND OFFICE SUPPLIES

- Office supplies (paper, desks, staples, pencils, etc.);
- Two Xerox machines located immediately outside the conference room; one located in the ECE/UNOG secretariat office; one located in the ECE/UNOG conference room; one located in the NGO conference room; and another in the NGO office separate from the Foreign Ministry;
- Sufficient paper and supplies for the reproduction of documents;
- Fax for transmissions between Berlin and Geneva in the ECE secretariat office;
- PCs with Microsoft Word programs in English/French/Russian with Internet and e-mail access and printers, allocated as per I above;
- A desk/table in the main conference room for the distribution/receipt of documents;
- PowerPoint equipment as per I above;
- Two host country flags of approximately 1 m 83 x 1 m 22 (see III below);
- Pigeon-hole distribution boxes.

III. EQUIPMENT TO BE PROVIDED BY THE UNITED NATIONS

- Two sets of nameplates for ECE member countries and observer countries. One set of nameplates for intergovernmental organizations. Ten nameplates reading “NGO”;
- Two United Nations flags for inside and outside (1 m 83 x 1 m 22).

IV. LOCAL PERSONNEL (provided by the Government)

- Liaison officer responsible for organizational arrangements, including during the preparatory period;
- Personnel for the registration of participants, for providing information and other services, able to communicate in English, French and Russian;
- Operators of word-processing equipment for English, French and Russian;
- A team responsible for the reproduction, assembling and distribution of documents issued during the Conference (five for reproduction and assembling and five for distribution);
- Four staff to assist Conference Room Officers;
- Personnel responsible for technical services.

V. UNITED NATIONS PERSONNEL

- Ten members of the ECE secretariat (see attached list);
- Twelve interpreters for simultaneous interpretation, four for English, four for French and four for Russian;
- Seven Conference service staff (one coordinator, two conference room officers, one documents control officer, one technical specialist, one reproduction officer and one distribution officer).

VI. FINANCIAL IMPLICATIONS (Government expenses)

- Travel by air economy class of the United Nations personnel, Geneva-Berlin-Geneva, daily subsistence and terminal allowances at the official United Nations rate in force at the time of the Conference;
- Excess baggage facilities for documents, files and other materials to be brought to Berlin before the Conference and their return to Geneva after the Conference;
- Cost of official telephone and telefax communications with Geneva.

UNOG personnel (Conference Services)

- One coordinator of team;
- One documents control officer;
- Two conference room officers;
- One technical specialist;
- One reproduction officer;
- One distribution officer.

ECE staff

- Executive Secretary;
- Five officers to provide logistical/substantive support on all aspects of the Conference. This number includes staff of the Population Activities Unit, Secretary of the Commission, and the Senior Adviser to the Executive Secretary, all of whom have been directly involved in the preparatory process;
- One press officer responsible for issuing press releases;

- One conference assistant to help in the accreditation/registration process and to give added support to conference room staff, and to handle administrative payment of daily subsistence allowance to participants;
- Two secretaries to support the above staff, and to help with the registration process.

II

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

Geneva, 17 July 2002

Sir,

Referring to your letter of 8 July 2002 concerning arrangements between the United Nations and the Government of the Federal Republic of Germany regarding the Ministerial Conference on Ageing, of the Economic Commission for Europe, to be held in Berlin from 11 to 13 September 2002, I have the pleasure to confirm the agreement of the Government of the Federal Republic of Germany to the arrangements outlined therein, in a modified version, as follows:

[See letter I, except for paragraph 8 modified as follows:]

“8. Although the Government of the Federal Republic of Germany cannot accept paragraph 8 as currently worded, it will do its utmost in a spirit of cooperation to find solutions to disputes that might arise between the United Nations Economic Commission for Europe and the Government of the Federal Republic of Germany concerning the interpretation or application of the arrangements for the Conference. We recommend that such disputes be settled by negotiation or by other means agreed upon between the Government of the Federal Republic of Germany and the United Nations Economic Commission for Europe. Any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations will be dealt with in accordance with article 30 of that Convention.”

(Signed) Walter LEWALTER
Ambassador

- (p) Agreement between the United Nations and the Government of South Africa regarding arrangements for the World Summit on Sustainable Development. Signed at New York on 9 August 2002²³

Whereas the General Assembly of the United Nations by its resolution 55/199 of 20 December 2000 decided to organize in 2002 the ten-year review of progress achieved in the implementation of the outcome of the

United Nations Conference on Environment and Development at the summit level in order to reinvigorate the global commitment to sustainable development;

Whereas the General Assembly accepted with gratitude the generous offer of the Government of South Africa (hereinafter referred to as “the Government”) to host the Summit;

Whereas the General Assembly decided to call the summit the World Summit on Sustainable Development (hereinafter referred to as “the Summit”);

Whereas the General Assembly further decided that the review should focus on the identification of accomplishments and areas where further efforts were needed to implement Agenda 21 and other outcomes of the United Nations Conference on Environment and Development, and should focus on action-oriented decisions in areas where further efforts were needed to implement Agenda 21, address, within the framework of Agenda 21, new challenges and opportunities, and result in renewed political commitment and support for sustainable development, consistent, inter alia, with the principle of common but differentiated responsibilities;

Whereas the General Assembly decided in section 1, paragraph 5, of resolution 40/243 of 18 December 1985 and reaffirmed in section A, paragraph 17, of resolution 47/202 of 22 December 1992 and United Nations bodies and organs might hold sessions away from established headquarters when the Government issuing the invitation for a session to be held within its territory agrees to defray, after consultations with the Secretary-General of the United Nations as to their nature and possible extent, the additional cost directly or indirectly incurred;

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

Article I

PLACE AND DATE OF THE SUMMIT

The Summit shall be held at the Sandton Conference Centre, Johannesburg, from 26 August to 4 September 2002 and may be preceded by pre-Summit consultations of not more than three days of representatives of States and organizations referred to in article II, taking place between 23 and 25 August 2002.

Article II

PARTICIPATION IN THE SUMMIT

1. Participation in the Summit shall be open upon invitation or designation by the United Nations to the following:

- (a) Representatives of States;

(b) Representatives of entities, intergovernmental organizations and other entities which have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the United Nations;

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

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

(e) Observers from other relevant intergovernmental organizations;

(f) Observers from accredited non-governmental organizations and other major groups;

(g) Individual experts and consultants in the field of environment and development invited by the United Nations;

(h) Officials of the United Nations Secretariat; and

(i) Other persons invited by the United Nations.

2. The Secretary-General of the United Nations or the Secretary-General of the Summit shall designate the officials of the United Nations assigned to attend the Summit for the purpose of servicing it. The Secretary-General shall provide to the Government a list of such personnel and their functions in due time prior to the opening of the Summit.

3. The public meetings of the Summit shall be open to representatives of information media accredited by the United Nations at its discretion after consultation with the Government.

4. The Secretary-General shall forward to the Government the names of the organizations and persons referred to in paragraph 1 of this article on a regular basis and shall update this information in due time before the opening of the Conference.

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide at its own expense the premises, including conference rooms, delegates' and interpreters' lounges, office space, storage areas and other related facilities and requirements (as specified in annex II entitled "Meeting Rooms, Office Equipment, Supplies, Transport and other Facilities Requirements").²⁴

2. The premises and facilities referred to in paragraph 1 of this article shall remain at the disposal of the United Nations 24 hours a day throughout the duration of the Summit and for such additional time, up to 7 days prior to the Summit and up to 2 days after the Summit, or as necessary and as agreed upon between the United Nations and the Government for the preparation and settlement of all matters connected with the Summit.

3. The Government shall, at its own expense, appropriately furnish, equip and maintain in good repair all the aforesaid rooms and facilities specified in paragraph 1 of this article for the effective conduct of the Summit as set out in annex II to this Agreement. The conference rooms shall be equipped for reciprocal simultaneous interpretation in the six languages of the United Nations and shall have facilities for sound recordings in those languages. Each interpretation booth shall have the capacity to switch to all seven channels (the “floor”—i.e. the speaker—plus each language channel). The Arabic and Chinese booths require a system whereby the interpreters can override either the English or French booth so that the Arabic and Chinese interpreters can work into those languages without physically moving to either booth.

4. The Government at its own expense shall provide, furnish, equip and maintain such equipment as word processors and typewriters with keyboards in the languages needed, dictating, transcribing, reproduction and such other equipment and office supplies as is necessary for the effective conduct of the Summit and for use by press representatives covering the Summit as set out in annex II to this Agreement. The Government may request the United Nations to furnish any of this equipment and supplies, a preliminary list of which is set out in annex II of this Agreement, in which case the provisions of paragraph 9 of this article shall apply.

5. The Government shall ensure that the following are available on a commercial basis for the use by delegations to the Summit for the duration of the Summit: a registration desk, banking facilities, a post office, telephone, telefax, Internet access and other telecommunication facilities, a travel agency, an information centre and a secretarial service centre. In addition, the Government shall ensure that restaurant facilities are available within secure walking distance of the Summit and that food facilities are available within the Summit area after normal working hours.

6. The Government shall install, at its own expense, facilities for written press coverage, film coverage, radio and television broadcasting of the proceedings, as set out in annex II to this Agreement.

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

8. The Government shall bear the cost of all utility services necessary for the effective functioning of the Summit. The Government shall also bear the cost of local telephone communications for the secretariat of the Summit and the cost of communications by telephone, telefax, electronic mail transmission, postage, diplomatic pouch and other international communications, between the secretariat of the Summit and United Nations Headquarters offices when such communications are made

or authorized by, or on behalf of, the Secretary-General or the Secretary-General of the Summit, including official United Nations information cables between the Summit site and United Nations Headquarters and the various United Nations information centres sufficient in particular for ensuring translation of documents by staff in remote locations as specified in annex II to this Agreement.

9. The Government shall bear the cost of the transport and insurance charges, from any established United Nations Office to the site of the Summit and return, of all United Nations supplies and equipment required for the functioning of the Summit. The United Nations shall determine the mode of shipment of such equipment and supplies. The United Nations shall inform the Government in due time of the supplies and equipment to be shipped and their cost.

10. Premises and facilities provided in accordance with this article may be made available if there is capacity to so do, in an adequate manner, to the observers from the non-governmental organizations referred to in article II, paragraph 1 (*f*) above for the conduct of their activities relating to their contribution to the Summit.

11. Access to the premises will be in accordance with procedures set out in annex IV of this Agreement entitled "Security Arrangements".

Article IV

MEDICAL FACILITIES

1. The Government, at its own expense, within the Summit area, shall provide medical facilities adequate for first aid in emergencies as set out in the appendix to annex IV.

2. For serious emergencies, the Government shall ensure immediate transportation and immediate admission to a hospital. The Government shall not be responsible for the cost of any hospital treatment. The Government shall provide to the United Nations, in due time prior to the Summit, information on commercial medical insurance that is available to those participating in the Summit as referred to in article II, paragraph 1, to cover costs of medical treatment. The United Nations shall circulate this information to such participants, recommending that they make arrangements to ensure that they have medical coverage while in South Africa.

Article V

ACCOMMODATION

The Government shall ensure that there is an adequate capacity for accommodation in hotels or residences which is available at reasonable commercial rates for persons participating in or attending the Summit, including officials from the United Nations Secretariat. The estimated number of persons participating in or attending the Summit, including officials from

the United Nations Secretariat, will be provided by the United Nations Secretariat in due course.

Article VI

TRANSPORT

1. The Government shall ensure the availability of adequate transportation for those participating in the Summit as referred to in article II, paragraph 1, and United Nations staff to and from the airport as well as transportation to and from the principal hotels and the Summit premises for the duration of the Summit.

2. The Government, in consultation with the United Nations, shall provide at its expense cars with drivers for official use by the principal officers and the secretariat of the Summit, as well as such other local transportation as is required by the secretariat in connection with the Summit. The Government and the United Nations shall coordinate requirements under this paragraph, which shall be set out in annex II to this Agreement.

Article VII

POLICE PROTECTION

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

2. If so requested by the Secretary-General, the appropriate South African authorities shall provide a sufficient number of police for the preservation of law and order in the Conference Centre and for the removal of persons therefrom as requested by the United Nations.

3. Detailed security arrangements and the responsibilities of the Government and the United Nations are set out in annex IV to this Agreement.

Article VIII

LOCAL PERSONNEL FOR THE SUMMIT

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

2. The Government shall in consultation with the United Nations engage and provide at its own expense the local personnel required in addition to the United Nations staff as set out in annex III to this Agreement who, for the duration of the Summit, shall be under the supervision of the United Nations to perform, in accordance with a calendar and time schedule to be established, the following functions:

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

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

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

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

3. The Government shall arrange at its own expense, at the request of the Secretary-General or the Secretary-General of the Summit, for up to 220 local personnel referred to in paragraph 2 above, to be available for up to seven days before and up to one day after the closing of the Summit, as required by the United Nations and as specified in annex III to this Agreement entitled "Local Staff Requirements".

4. The Government shall arrange at its own expense, at the request of the Secretary-General or the Secretary-General of the Summit at the Conference, for the local personnel or some of them referred to in paragraph 2 above to be available in order to maintain such night-time services as may be required in connection with the Summit.

Article IX

FINANCIAL ARRANGEMENTS

1. In consultation with the United Nations, the Government, in addition to the financial responsibility provided for elsewhere in this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the Summit in South Africa rather than at established United Nations Headquarters (New York). Such additional costs, which are provisionally estimated at US\$ 1,906,133, shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the Secretary-General to undertake preparatory visits to South Africa and to attend the Summit, as well as the costs of shipment of equipment and supplies not readily available locally. Arrangements for such travel and shipment shall be made by the Secretary-General in accordance with the Financial Regulations and Rules and Staff Regulations and Rules of the United Nations and its related administrative practices in regard to travel standards, baggage allowance, subsistence

payment (per diem) and terminal expenses. The list of United Nations officials needed to service the Summit and the related estimated travel costs are set out in annex I to this Agreement entitled “Cost of United Nations Staff Travel”.

2. The Government shall, not later than Monday, 12 August 2002, deposit with the United Nations the sum of US\$ 1,906,133, representing the total estimated costs referred to in paragraph 1 of this article.

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

4. The deposit referred to in paragraph 2 above shall be used only to pay the obligations of the United Nations in respect of the Summit.

5. The Government shall at no cost to the United Nations provide up to 290 air tickets on British Airways and South African Airways for the travel of a designated number of United Nations officials who have been assigned by the Secretary-General to attend the Summit. This contribution, which shall have a total estimated value of ZAR 11,600,000, shall be accepted as a voluntary contribution pursuant to this Agreement and shall be administered by the United Nations in accordance with its financial regulations, rules and procedures and shall be used solely for the activities of the United Nations in connection with the Summit. The acceptance of such a voluntary contribution shall not directly or indirectly involve any additional liability for the Organization and the Government agrees to indemnify and hold harmless the United Nations and its personnel in respect of any action, claim or other demand which may arise as a result of the acceptance of this voluntary contribution. Details of this arrangement are set out in the attachment to annex I.

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

Article X

LIABILITY

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

(a) Injury to persons or damage to or loss of property in the premises referred to in paragraph 1 of article III that are provided by or under the control of the Government;

(b) Injury to persons, or damage to or loss of property caused by, or incurred in using, the transport services provided by the Government as set out in article VI;

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

2. The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand except where the Government and the United Nations agree that such action, claim or demand evolved from the gross negligence or wilful misconduct of an official of the United Nations.

3. Without prejudice to its privileges and immunities, the United Nations agrees to render all reasonable assistance and to use its best efforts to make available to the Government, on a voluntary basis, relevant information, evidence and documents to enable the Government to deal with any action, claim or other demand contemplated under article X.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as “the Convention”) shall be applicable in respect of the Summit. In particular, the representatives of States referred to in article II, paragraph 1 (a) above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations, performing functions in connection with the Summit referred to in article II, paragraphs 1 (b) and 2 above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention, and any experts on mission for the United Nations in connection with the Summit referred to in article II, paragraph 1 (g), shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The participants referred to in article II, paragraph 1 (b), (c) and (d) above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Summit. The observers referred to in article II, paragraph 1 (e) and (f) above, shall be accorded the appropriate facilities necessary for the independent exercise of their activities in connection with the Summit.

3. In carrying out their official functions for the United Nations, the personnel provided by the Government under article VIII above shall enjoy

immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Summit.

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

5. Without prejudice to the preceding paragraphs of the present article, all persons performing functions in connection with the Summit, and all those invited or accredited to the Summit, shall enjoy, as applicable, the privileges, immunities and/or facilities necessary for the independent exercise of their functions in connection with the Summit. Representatives of the press or of other information media shall be accorded the appropriate facilities necessary for the independent exercise of their activities in connection with the Summit.

6. All persons referred to in article II shall have the right of entry into and exit from South Africa, and no impediment shall be imposed on their transit to and from the Summit area. Visas and entry permits, where required, shall be granted to all those invited to the Summit free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Summit. If the application for the visa is not made at least two-and-a-half weeks before the opening of the Summit, the visa shall be granted no later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Summit from 26 August to 4 September 2002 are delivered at the airport of arrival to those who were unable to obtain them prior to their arrival.

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

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

9. All persons referred to in article II above shall have the right to take out of South Africa at the time of their departure, without any restriction, any unexpended portions of the funds they brought into South Africa in connection with the Summit and to reconvert any such funds at the prevailing market rate.

Article XII

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation, tax-free and duty-free, of all equipment and supplies imported and exported by the

United Nations for its official use, including technical equipment accompanying representatives of information media, referred to in article III. It shall issue, without delay, to the United Nations any necessary import and export permits for this purpose.

Article XIII

SETTLEMENT OF DISPUTES

Any dispute between the Government and the United Nations concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party to a tribunal of three arbitrators, one to be named by the Government, one to be named by the Secretary-General of the United Nations, and the third, who shall be the chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. 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. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention. Furthermore, any dispute that involves a question regulated by the Convention on the Privileges and Immunities of the Specialized Agencies shall be dealt with in accordance with section 32 of that Convention.

Article XIV

FINAL PROVISIONS

1. This Agreement may be modified by written agreement between the United Nations and the Government.
2. This Agreement shall enter into force immediately upon signature by the Parties and shall remain in force for the duration of the meeting and for such a period thereafter as is necessary for all matters relating to any of the provisions to be settled.

SIGNED in New York this 9th day of August 2002.

For the United Nations:
[Signature]
Nitin DESAI
*Under-Secretary-General for
Economic and Social Affairs*

For the Government of South Africa:
[Signature]
N. C. Dlamini ZUMA
Minister of Foreign Affairs

- (g) Exchange of letters between the United Nations and the Government of Italy constituting an Agreement regarding arrangements for the First Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, to be held in Lucca from 21 to 23 October 2002. Signed at Geneva on 23 September and 15 October 2002²⁵

I

LETTER FROM THE UNITED NATIONS

23 September 2002

Sir,

I have the honour to transmit to you below the text of arrangements between the United Nations and the Government of Italy (hereinafter referred to as “the Government”) in connection with the First Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, to be held, at the invitation of the Government, in Lucca from 21 to 23 October 2002.

“Arrangements between the United Nations and the Government of Italy regarding the First Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, to be held in Lucca from 21 to 23 October 2002

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

“2. Through the Italian contribution to the UN/ECE Trust Fund, section Aarhus, the following expenses will be covered:

(a) Air tickets (economy class, Geneva-Pisa-Geneva), subsistence allowance and terminal expenses (euros) for six (6) members of the ECE Secretariat;

(b) Air tickets and remaining DSA (20 per cent) for three (3) participants from each of the eleven (11) most economically disadvantaged ECE countries in transition: Environment Minister plus two delegates, economy class;

(c) Remaining DSA (20 per cent) for three (3) participants from the seven (7) other countries eligible for financial support;

(d) Air tickets (economy class, Geneva-Pisa-Geneva), remunerations, subsistence allowance and terminal expenses for six (6) interpreters in English, French and Russian;

(e) Vouchers for excess baggage for documents and records.

“3. The Government will provide for the Meeting adequate facilities, including personnel resources, space and office supplies, as well as logistical support as listed in the annex.

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

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

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

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

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

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

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

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

“8. Any dispute concerning the interpretation or implementation of these arrangements, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, will, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the Chairman, then such arbitrator will be nominated by the 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 Italy which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation and winding up.

(Signed) Sergei ORDZHONIKIDZE
Director-General
United Nations Office at Geneva

ANNEX

Staff and facilities necessary for the organization of the First Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Lucca, Italy, 21-23 October 2002

I. SPACE FACILITIES

—A conference room with a seating capacity for approximately 150 participants, including appropriate table space for each delegation, equipped for simultaneous interpretation into English, French and Russian; the interpretation equipment should be of a standard similar to that of the Palais des Nations, Geneva, with a sufficient number of microphones and headphones to enable all participants to join in the discussions from their seats. The interpretation booths should be well insulated (provided by the Government);

- A smaller meeting room for 25-30 persons for informal meetings and coordination meetings of the different subregions, without interpretation equipment (provided by the Government);
- An office for the ECE secretariat with desks and equipment (see II and III) (provided by the Government);
- Offices for the Italian Minister for the Environment and for the Danish Presidency of the European Union, with desks and equipment (see II and III) (provided by the Government);
- Registration/information desk near the conference room (provided by the Government);
- A smaller meeting room for NGOs with desks and equipment (provided by the Government).

II. EQUIPMENT AND OFFICE SUPPLIES

- Office supplies (paper, staples, correcting fluid, floppy disks etc.) (provided by the Government);
- Two efficient photocopying machines with sorting and stapling functions and paper, with a back-up contract in case they break down (provided by the Government);
- Two data projectors and one overhead projector and large screen for both transparencies and electronic presentations (e.g. PowerPoint, Netscape for live Internet presentations) (provided by the Government);
- Two personal computers with word-processing programs and printers and Internet access, to be installed in the secretariat offices, and one printer to be installed on the podium for the Chair and the secretariat (provided by the Government);
- Desks for the distribution of documents to participants (provided by the Government);
- Nameplates and stands for countries, international organizations and officers, for tables in the conference hall (provided by the United Nations);
- United Nations flag for outdoor use (1.83 x 2.75 m) and two United Nations flags for indoor use (1.22 x 1.83 m) (provided by the United Nations);
- Host country flags of similar sizes, to be provided by host country (provided by the Government).

III. LOCAL PERSONNEL

- Liaison officer responsible for organizational arrangements, including during the preparatory period (provided by the Government);
- Personnel for the registration of participants, for providing information, distributing documents and other services, able to communicate in English/French (provided by the Government);
- Personnel responsible for the functioning of the technical equipment (provided by the Government);
- Two interpreters for simultaneous interpretation into Italian (provided by the Government).

IV. UNITED NATIONS PERSONNEL

- Six members of the ECE secretariat (coming from Geneva; costs covered through the Trust Fund);
- Six interpreters for simultaneous interpretation into English, French and Russian (coming from Geneva; costs covered through the Trust Fund);

- Travel by air economy class of the United Nations personnel, Geneva-Lucca-Geneva, subsistence and terminal allowances at the official United Nations rate in force at the time of the Meeting (provided for through the Trust Fund);
- Air freight or excess baggage facilities (maximum 10 kg) for documents to be brought to Lucca before the Meeting, etc. (provided through the Trust Fund).

V. ACCOMMODATION AND MEALS

- Hotel accommodation (provided by the Government) for:
 - A maximum of 55 Environment Ministers from ECE member States;
 - Two delegates for each of the 18 countries with economies in transition;
 - Six members of the ECE secretariat;
 - A maximum of 50 NGOs;
- Coffee, tea and soft drinks served during the coffee breaks (provided by the Government);
- Lunches for all participants during the meeting (21-23 October) (provided by the Government);
- Two official dinners for all participants on 21 and 22 October (provided by the Government);
- For the two delegates of the 18 countries with economies in transition (provided by the Government):
 - Three dinners (19, 20 and 23 October);
 - Two lunches (20 and 24 October).

VI. TECHNICAL ARRANGEMENTS

- All technical equipment for the side event on electronic information tools (specifications by UNEP/GRID and Regional Environmental Centre (REC)) (provided by the Government);
- PCs (eight) with Internet access for the use of the delegates (provided by the Government);
- Internet access at the podium (provided by the Government).

VII. PRACTICAL ARRANGEMENTS

- Flowers and other decoration of the meeting room (provided by the Government);
- Panels in the conference room to exhibit different material and provide practical information (provided by the Government);
- Local transportation, including transfer from and to Pisa Airport as well as to and from hotels, conference venue and premises for evening events (provided by the Government);
- Photographer to take photos during the first day of the meeting (21 October), including a “family photo” of all Ministers and one of all participants (provided by the Government).

VIII. PRESS

- Contact with local and national media to inform them of the event (provided by the Government);
- Organization in cooperation with the Aarhus Convention Secretariat of a press conference, including the provision of the interpreters for Italian (provided by the Government).

II

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

15 October 2002

Sir,

I have the honour to transmit to you below the text of arrangements between the Government of Italy (hereinafter referred to as “the Government”) and the United Nations in connection with the First Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, to be held at the invitation of the Government, in Lucca, from 21 to 23 October 2002.

“Arrangements between the United Nations and the Government of Italy regarding the First Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, to be held in Lucca from 21 to 23 October 2002”

[See letter I]

* * * * *

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

*(Signed) Andrea Negrotto CAMBIASO
Permanent Representative of Italy
to the United Nations Office at Geneva*

- (r) Exchange of letters between the United Nations and the Government of the United Arab Emirates constituting an Agreement regarding arrangements for the organization of the International Workshop on “Social Dimensions of Macroeconomic Policy in a Globalizing World”, to be held in Abu Dhabi from 16 to 18 December 2002. Signed at New York on 25 October and 13 November 2002²⁶

I

LETTER FROM THE UNITED NATIONS

25 October 2002

Excellency,

I have the honour to refer to the arrangements concerning the organization of an International Workshop on “Social Dimensions of Macro-

economic Policy in a Globalizing World” (hereinafter referred to as “the Workshop”). The Workshop will be organized by the United Nations, represented by the Department of Economic and Social Affairs (hereinafter referred to as “the United Nations”), in cooperation with the Government of the United Arab Emirates, represented by the Ministry of Planning (hereinafter referred to as “the Government”). With the present letter, I wish to obtain your Government’s acceptance of the following:

1. The Workshop will be attended by the following participants:
 - (a) Sixteen government officials from relevant countries selected by the United Nations;
 - (b) Ten local government officials selected by the Government;
 - (c) Two officials from the United Nations Secretariat;
 - (d) Other participants, invited as observers by the United Nations and the Government, including representatives from the United Nations system and from intergovernmental or non-governmental organizations or institutions.
2. The total number of participants will be approximately 30. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Workshop.
3. The Workshop will be conducted in English.
4. The United Nations will be responsible for:
 - (a) The planning and running of the Workshop and the preparation of the appropriate documentation;
 - (b) Substantive support before and during the Workshop;
 - (c) The administrative arrangements and costs relating to the participants specified in subparagraphs 1 (a) and 1 (c) above, including the issuance of airplane tickets, payment of subsistence allowance and the final settlement of travel claims for the participating experts and United Nations staff members; and
 - (d) The preparation of the report of the Workshop in English.
5. The Government will provide the following:
 - (a) A suitable venue for the Workshop;
 - (b) Local counterpart staff to assist with advance planning and any necessary administrative support during the Workshop;
 - (c) Any costs related to participation of national participants specified in subparagraph 1 (b);
 - (d) Simultaneous interpretation into Arabic during the Workshop;
 - (e) Any necessary office equipment, including a photocopy machine and word-processing facilities;

(f) Necessary communications facilities (telephone, facsimile and/or e-mail) for use by the secretariat of the Workshop to maintain contact with the United Nations and elsewhere.

6. The Workshop will be held in Abu Dhabi from 16 to 18 December 2002. All facilities will be arranged by the Government in consultation with the United Nations.

7. The cost of transportation and daily subsistence allowance for observers, as specified in subparagraph 1 (d) above, will be the responsibility of their organizations.

8. As the Workshop will be convened by the United Nations, I wish to propose that the following terms shall apply:

(a) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (“the Convention”), and the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947 (“the Specialized Agencies Convention”), to both of which the Government is a party, shall be applicable in respect of the Workshop;

(b) Any representatives of intergovernmental organs invited by the United Nations to participate in the Workshop shall enjoy the privileges and immunities accorded by article IV of the Convention. The participants invited by the United Nations designated by the Secretary-General as experts on missions for the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Workshop shall be accorded the privileges and immunities provided under articles VI and VIII of the Specialized Agencies Convention;

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

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

(e) All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from the United Arab Emirates. Visas and entry permits, where required, will be granted free of charge and as speedily as possible. When applications are made four weeks before the opening of the Workshop, visas shall be granted not later than two weeks before the opening of

the Workshop. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible, and not later than three days before the opening. Arrangement shall also be made to ensure that visas for the duration of the Workshop are delivered at the airport of arrival to those who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and, in any case, not later than three days before the closing of the Workshop.

9. The Government will be responsible for dealing with any action, claim or other demand against the United Nations or its officials arising out of: (i) injury to persons or damage to or loss of property in conference or office premises provided for the Workshop; (ii) injury to persons or damage to or loss of property caused by or incurred in using any transport services that are provided for the Workshop by or under the control of the Government; (iii) the employment for the Workshop of personnel provided or arranged for by the Government; and the Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand.

10. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention that is regulated by section 30 of the Convention or section 32 of the Specialized Agencies Convention or of any other applicable agreement, shall, unless the parties otherwise agree, be resolved by negotiations or other agreed mode of settlement. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of either party of a final decision 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 the arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the Chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

I further propose that, upon receipt of your Government's confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of the United Arab Emirates regarding the hosting of the Workshop, which shall enter into force on the date of your reply and shall remain in force for the duration of the

Workshop and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

(Signed) Nitin DESAI
Under-Secretary-General
Department of Economic and Social Affairs

II

LETTER FROM THE MINISTRY OF PLANNING OF THE UNITED ARAB EMIRATES
TO THE UNITED NATIONS

Abu Dhabi, 13 November 2002

Dear Sir,

*Organization of the International Workshop on "Social Dimensions of
Macroeconomic Policy in a Globalizing World"*

With reference to the letter No. DESA/02/277 dated 25 October 2002 addressed to the Permanent Representative of the United Arab Emirates to the United Nations, a copy of it has been hand-delivered by Dr. Alexei Tikhomirov concerning the arrangements to be provided by each party.

We hereby confirm hosting the above Workshop in Abu Dhabi, United Arab Emirates, from 16 to 18 December 2002.

The Government of the United Arab Emirates, represented by the Ministry of Planning, will provide the facilities stated in the above-mentioned letter.

Since issuance of entry visas requires some time, and due to the shortage of time, we need to receive at your earliest convenience the following:

1. List of names of all participants and names of their respective countries.
2. Names of United Nations speakers, Secretariat officials, observers and ESCWA representatives.
3. Final official programme of the Workshop.

Since simultaneous interpretation will be provided at the opening and closing sessions as agreed with Dr. Tikhomirov, we need to know the number of papers to be presented to the Workshop and requiring translation and the time duration expected for each paper.

We again reiterate the urgency of receiving the above information as quickly as possible.

(Signed) Abdullateef Mohamed BIN HAMMAD
Under-Secretary
Ministry of Planning

- (s) Exchange of letters between the United Nations and the Government of the Republic of Korea constituting an Agreement regarding arrangements to host the United Nations Conference on Disarmament and Non-proliferation Issues, to be held on Jeju Island from 3 to 5 December 2002. Signed at New York on 29 November and 2 December 2002²⁷

I

LETTER FROM THE UNITED NATIONS

29 November 2002

Excellency,

I have the honour to refer to your note verbale of 14 March 2002, in which the Government of the Republic of Korea (hereinafter “the Government”) expressed its intent to host the United Nations International Conference on Disarmament and Non-proliferation Issues (hereinafter “the Conference”) which will be held at the Shilla Hotel, Jeju Island, Republic of Korea, from 3 to 5 December 2002.

The United Nations, represented by the Department for Disarmament Affairs through its Regional Centre for Peace and Disarmament in Asia and the Pacific (hereinafter “the United Nations”), which will organize the Conference in cooperation with the Government, would like to take this opportunity to tender its gratitude to the Government for its offer to host the Conference.

It is understood that approximately 30 participants, including government experts mostly from the Asian-Pacific region and four officials of the United Nations in various capacities, are attending the Conference.

It is also understood that arrangements concerning the practical aspects relating to the organization of the Conference have been made with the Government.

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

1. *Privileges and immunities*

(a) The Convention on the Privileges and Immunities of the United Nations approved by the General Assembly on 13 February 1946 (hereinafter “the Convention”), to which the Republic of Korea is a party, will be applicable with respect to the Conference. In particular, the representatives of States participating in the Conference shall enjoy the privileges and immunities provided under article IV of the Convention. Above-mentioned officials of the United Nations participating in or performing functions in

connection with the Conference will enjoy the privileges and immunities provided under articles V and VII of the Convention and any experts on mission for the United Nations in connection with the Conference will enjoy the privileges and immunities provided under articles VI and VII of the Convention.

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

(c) All participants and persons performing functions for the United Nations in connection with the Conference and the officials of the United Nations will be permitted to enter into and exit from the Republic of Korea, and be granted visas and entry and exit permits, where required, free of charge and as promptly as possible.

2. Police protection and tranquillity of premises

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

3. Liability and indemnification

It is further understood that the Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its officials arising out of:

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

(b) Injury to persons or damage to or loss of property caused by or incurred in using the transportation provided or arranged by the Government; and

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

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

4. Settlement of disputes

Any dispute between the United Nations and the Government concerning the interpretation or application of the present arrangements will

be settled by negotiation or by other means to be agreed upon by the United Nations and the Government.

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

(Signed) Evgeniy GORKOVSKIY
Officer-in-Charge
Department for Disarmament Affairs

II

COMMUNICATION FROM THE PERMANENT MISSION OF THE REPUBLIC OF KOREA

The Permanent Mission of the Republic of Korea to the United Nations presents its compliments to the Secretariat of the United Nations, and with regard to the host country agreement for the Conference on Disarmament and Non-proliferation Issues to be held from 3 to 5 December 2002 on Jeju Island, Republic of Korea, would like to inform the latter that the Korean Government has accepted the proposals suggested in the letter dated 29 November 2002 to Ambassador Sun Joun-yung, Permanent Representative of the Republic of Korea, from Mr. Evgeniy Gorkovskiy, Officer-in-Charge of the Department for Disarmament Affairs.

2 December 2002
New York

- (t) Agreement between the United Nations and the Government of the Kingdom of Sweden for Restoration, Preservation and Long-term Archival Storage of the Film Material on United Nations Secretary-General Dag Hammarskjöld. Signed at New York on 19 December 2002²⁸

This Agreement is made by and between the United Nations, an international intergovernmental organization, hereinafter referred to as “the UN”, with its principal headquarters in New York, New York 10017, USA, and the Kingdom of Sweden, hereinafter referred to as “Sweden”. The UN and Sweden are hereinafter jointly referred to as “Parties” and each individually as “Party”.

WITNESSETH THAT:

Whereas the UN and Sweden wish to have the archival film material held in the UN archives relating to Mr. Dag Hammarskjöld’s tenure as Secretary-General of the United Nations from 1953 to 1961 restored, preserved and archived on a long-term basis under safe conditions;

Whereas Sweden represents that it possesses the requisite knowledge, skill, personnel, resources and experience and is ready, willing and able to restore, preserve and, under safe conditions, store the above-mentioned film material; and

Whereas the UN and Sweden undertake to work cooperatively for the purposes set out in this Agreement;

Now, therefore, in consideration of the mutual covenants and subject to the terms and conditions hereinafter set forth, the Parties hereto agree as follows:

Article 1

SCOPE OF AGREEMENT

1.1 The United Nations shall make available to Sweden, free of charge, the film material currently held in the United Nations archives on Mr. Dag Hammarskjöld, relating to his tenure as Secretary-General of the United Nations from 1953 to 1961, as listed in annex A to this Agreement, or any additional material listed under article 5.2 hereunder, hereinafter “the Film Material”, for restoration, preservation and long-term archival storage.

1.2 Sweden shall be responsible for the restoration, preservation and long-term archival storage of the Film Material at no cost to the United Nations.

1.3 After completion of the restoration, the original Film Material shall be stored in containers clearly labelled as United Nations property for preservation and long-term archival storage under the control and custody of Sweden in the “Dag Hammarskjöld United Nations Archives” to be established in Sweden. The “Dag Hammarskjöld United Nations Archives” shall be equipped with an optimal climate-controlled storage facility.

1.4 Without prejudice to article 1.3, the ownership, including all proprietary rights, to the Film Material shall remain with the United Nations.

Article 2

GENERAL RESPONSIBILITIES OF THE PARTIES

2.1 The Parties agree to carry out their respective responsibilities in accordance with the provisions of this Agreement.

2.2 Each Party shall designate, in writing, to the other Party, a high-ranking official to act as the overall coordinator of the activities undertaken pursuant to this Agreement. Such an official shall be responsible for contacts with the other Party on operational matters and act as the focal point for liaison. Any change in such designation shall be notified, in writing, to the other Party.

2.3 The Parties shall keep each other informed of all activities pertaining to this Agreement and shall consult as circumstances arise that may have a bearing on the status of either Party.

2.4 Sweden shall provide to the United Nations annual status reports, in writing, on its activities concerning restoration and preservation of the Film Material.

Article 3

TERMS OF AGREEMENT

3.1 *Funding*

Sweden shall finance the activities to be undertaken by Sweden under this Agreement. The funding shall cover (1) the transport of the Film Material to the restoration site in Sweden from the UN archives at UN Headquarters in New York; (2) the restoration works; and (3) the subsequent preservation and long-term archival storage of the original Film Material in the “Dag Hammarskjöld UN Archives” to be established in Sweden as set forth above.

3.2 *Copyright*

3.2.1 The UN retains the copyright for film and television or other visual media of the Film Material made available to Sweden under this Agreement.

3.2.2 By virtue of this Agreement, the UN does not assign, transfer or otherwise grant any copyright or any other intellectual or property rights that the UN may have in the Film Material.

3.3 *Usage rights*

3.3.1 Any future use of the Film Material, including for film or television or other visual media, shall be subject to prior written approval and financial arrangement obtained from the UN. The UN retains the right to consult, as appropriate, with Mr. Dag Hammarskjöld’s family prior to such approval.

3.3.2 Without prejudice to article 3.3.1, and without prior approval from the UN and free of charge or royalty, Sweden is authorized to make the Film Material available for research and study purposes relevant to the life and times of Mr. Dag Hammarskjöld in accordance with relevant Swedish legislation relating to official archives.

3.3.3 The UN shall be provided with a courtesy credit no less prominent than that given to any other provider of similar materials as the Film Material.

3.3.4 The name and emblem of the UN may only be used in direct connection with the activities related to this Agreement and subject to the prior written consent of the UN.

3.4 *Replicate digital videotapes*

After completion of the restoration, Sweden shall make available to the UN a clearly labelled replicate digital videotape version of the restored Film Material at no cost to the UN.

3.5 *Database records*

Sweden shall make the classified and indexed records of the restored Film Material available to the UN at no cost to the UN. These records shall be provided in English in hard copies and in an electronic format.

Article 4

MODALITIES OF TRANSFER

4.1 *Verification of tape back-ups of key historical material*

The UN shall inspect the Film Material and identify those that already have videotape back-ups. In cases where there is no videotape back-up, and both the UN and Sweden deem that the footage is of crucial historical value, Sweden shall transfer such film to videotape, at no cost to the UN, before the original Film Material is released to Sweden.

4.2 *Shipment*

4.2.1 Sweden shall be responsible for all shipping expenses and for any loss of or damage to the Film Material after it is made available to Sweden for restoration from the UN archives at its principal Headquarters in New York.

4.2.2 In order to minimize any loss or damage to the Film Material, and any additional material that may be made available to Sweden for restoration, the Film Material shall be shipped in several consignments as agreed upon by the UN and Sweden.

Article 5

ADDITIONAL MATERIALS

5.1 *Inspection of available records*

In addition to making the Film Material available to Sweden for restoration, preservation and long-term archival storage, the UN will provide an opportunity to Sweden to inspect, as appropriate, other available UN archival records such as index cards, files, audio material and photographs relating to Mr. Dag Hammarskjöld's tenure as Secretary-General of the UN.

5.2 *List of material transferred*

If, in addition to the Film Material, any additional material such as audio recordings and photographs from the UN archives is made available to Sweden for restoration, preservation and long-term archival storage, the

Parties will jointly prepare a detailed list of any such material before it is made available to Sweden.

Article 6

PRIVILEGES AND IMMUNITIES

Except as otherwise expressly provided in this Agreement, nothing in this Agreement shall be deemed a waiver of any of the privileges and immunities of the UN.

Article 7

SETTLEMENT OF DISPUTES

Any dispute between the UN and Sweden 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 8

NOTICES

Unless otherwise specified in the Agreement, all notices and other communications required or contemplated under this Agreement shall be given in writing and addressed and delivered to the Party for whom intended at the address shown below or such other address as the intended recipient may from time to time designate by written notice:

If to the UN:

Under-Secretary-General for Communications and
Public Information
S-1027A
United Nations
New York, New York 10017

If to Sweden:

Ambassador
Permanent Mission of Sweden to the United Nations
885 Second Avenue, 46th floor
New York, New York 10017

Article 9

AMENDMENTS

The Agreement or its annex may be modified or amended only by written agreement between the Parties.

Article 10

TERMINATION

The Parties recognize that the successful restoration and preservation of the Film Material is of paramount importance. Should circumstance arise which would inhibit successful completion of the restoration and preservation of the Film Material, the Parties shall consult with each other and seek to rectify the circumstances. If the situation cannot be rectified, either Party may terminate this Agreement by written notice to the other Party. This Agreement shall cease to be in force six months from the date of such notice.

Article 11

ENTRY INTO FORCE

The term of this Agreement shall commence on the signing of this Agreement.

IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives, have caused the Agreement to be executed in their respective names on the date written below.

For the United Nations:
[Signature]
Shashi THAROOR
*Under-Secretary-General
for Communications and
Public Information*
19 December 2002

For the Kingdom of Sweden:
[Signature]
Pierre SCHORI
*Ambassador
Permanent Representative
of Sweden to the United Nations*
19 December 2002

B. Treaty provisions concerning the legal status of inter-governmental organizations related to the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.²⁹ APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 2002, the following State acceded to the Convention in respect of the specialized agencies indicated below:

<i>State</i>	<i>Date of receipt of instrument of accession or succession</i>	<i>Specialized agencies</i>
South Africa	30 August 2002	ILO, FAO (Second Revised Text), ICAO, UNESCO, IMF, IBRD, WHO (Third Revised Text), UPU, ITU, WMO, IMO (Revised Text), IFC, IDA, WIPO, IFAD, UNIDO

As at 31 December 2002, 108 States were parties to the Convention.³⁰

2. INTERNATIONAL LABOUR ORGANIZATION

(a) Agreement between the Organisation internationale de la francophonie and the International Labour Organization. Signed at Geneva on 13 February 2001

The Organisation internationale de la francophonie (OIF) in Paris (hereinafter referred to as “the OIF”), represented by the Secretary-General, and the International Labour Organization (ILO) in Geneva (hereinafter referred to as “the ILO”), represented by the Director-General;

Considering that the objectives of the OIF include those of helping to prevent conflicts, supporting the rule of law and human rights, bringing peoples closer together through mutual knowledge and strengthening their solidarity through multilateral cooperation with a view to promoting the growth of their economies, with respect for the sovereignty, languages and cultures of different States;

Considering also that the fundamental goal of the ILO is to promote justice, social progress and access to employment, specifically through the development of international standards, technical cooperation programmes and research activities, with a view to achieving material progress and spiritual fulfilment for all people in conditions of freedom and dignity, economic security and equality of opportunity;

Considering, furthermore, the many member countries and areas of activity which the OIF and ILO have in common;

Valuing institutional dialogue between Governments and representatives of civil society in their respective bodies;

Recalling the institutional relations that have existed for many years between the two organizations;

Convinced of the importance of linguistic diversity as a factor in development and peace and as a key element in multilateralism and international democracy;

Desirous of continuing and strengthening their collaboration in order to enhance the effectiveness of their respective activities and better achieve their common objectives for the benefit of their members;

Agree to direct and harmonize their efforts to ensure reciprocal information, consultation and cooperation in accordance with the following provisions.

Article I

RECIPROCAL INFORMATION

Subject to any provisions that may be needed to safeguard the confidentiality of certain documents, the OIF and ILO shall regularly exchange information, publications and any documents on matters of common interest, so as to promote the development of their activities. The practical means of organizing such exchanges shall be determined by the two parties jointly.

Article II

RECIPROCAL INVITATIONS

The parties shall invite one another to appoint representatives at meetings and conferences of common interest where the relevant regulations provide for the attendance of such representatives. To that end, each of the parties shall inform the other in advance of its schedule of meetings and of the nature of those meetings.

Article III

CONSULTATION

1. A joint committee may be established to administer the application of the present Agreement. Its members in that case shall be appointed

by the Secretary-General of the OIF and the Director-General of the ILO. The practical organization of the committee's meetings and the content of its discussions shall be defined jointly by the parties.

2. The OIF shall inform the ILO of any of its projects relating to common objectives for which it desires the ILO's cooperation. Similarly, the ILO shall inform the OIF of any of its projects relating to common objectives for which it desires the cooperation of the OIF.

Article IV

COOPERATION

1. As part of their respective programmes, the ILO and OIF may agree to formulate and implement joint collaborative activities, in particular in the following areas:

- The social dimension of globalization, within the framework of a comprehensive social and economic development strategy in which economic and social policies are mutually reinforcing with the aim of combating poverty and bringing about broadly based and sustainable development based on respect for the fundamental rights at work, promotion of access to employment and income, improvement and expansion of social protection, and strengthening of social dialogue;
- The promotion of the ILO Declaration on Fundamental Principles and Rights at Work, namely freedom of association and effective recognition of the right of collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the elimination of discrimination in employment and occupation—and of its follow-up, and the study, promotion and application of international labour standards;
- Integration of young people at work, in particular through the development of vocational training and support to the creation and management of small and microenterprises and cooperatives;
- Promotion of equal opportunities for men and women in the world of work, in particular through vocational training;
- Strengthening of the training capacities of the Écoles nationales d'administration and the regional labour administration centres, especially in Africa, making use in particular of distance training tools and new information technologies;
- Strengthening of the capacity of management training schools with a view to promoting cooperation between enterprises;
- Harnessing of new information technologies, such as the Internet, by vocational training providers, through a programme to introduce multipurpose cybercentres;
- Promotion of cultural diversity and of the French language in the various spheres of activity of the ILO and OIF.

2. The development and implementation of joint activities in areas of common interest shall be the subject of special arrangements defining the practical, technical and financial modalities of participation of the parties, which shall be clearly defined.

3. Any minor and routine expenses arising from the implementation of the present Agreement shall be borne by each of the respective organizations. Any other obligation, activity or expenditure which either of the parties might wish to undertake under the present Agreement shall be the subject of consultations between the ILO and the OIF with a view to determining the availability of the necessary resources, the best way of sharing the cost burden and, if resources are not available, the best means of obtaining them.

Article V

IMPLEMENTING PROVISIONS

1. The Secretary-General of the OIF and the Director-General of the ILO shall consult one another as necessary on matters relating to the present Agreement. They may agree on additional administrative provisions for the purpose of implementing the present Agreement.

2. The present Agreement, having been approved in advance by the Governing Body of the ILO and by the competent bodies of the OIF, shall enter into force on the date on which it is signed by the authorized representatives of the parties.

3. The present Agreement shall not be amended except by formal agreement of both parties. Any such amendment shall enter into force three months after the date on which agreement is given.

4. Each of the parties may abrogate the present Agreement by giving prior notice in writing, six months in advance, to the other party. Denunciation of the present Agreement by one of the parties shall not in any way affect obligations previously entered into.

5. Each party shall apply the Agreement in accordance with its own rules and regulations and in accordance with any decisions by its competent bodies.

6. Any dispute regarding the interpretation or application of the present agreement shall be settled amicably by the parties.

IN WITNESS WHEREOF the representatives of the OIF and ILO have signed two copies of the Agreement in French, both copies being equally authoritative.

DONE at Geneva, 13 February 2001.

*For the Organisation
internationale de la francophonie:*
[Signature]
Boutros BOUTROS-GHALI
Secretary-General

*For the International Labour
Organization:*
[Signature]
Juan SOMAVIA
Director-General

- (b) Agreement between the United Nations and the International Labour Organization regarding the use and occupation of the premises at the International Training Centre of the International Labour Organization in Turin and the facilities and services thereof by the United Nations System Staff College. Signed on 30 January 2002³¹

Whereas the General Assembly of the United Nations has established the United Nations System Staff College (hereinafter referred to as “the Staff College”) in Turin,

Whereas the International Training Centre of the ILO (hereinafter referred to as “the Centre”) with the concurrence of the International Labour Organization and the City of Turin and within the framework of their Covenant of 29 July 1964 (hereinafter referred to as “the Covenant”), a copy of which is appended to the present Agreement,³² is willing to make a pavilion on its campus and related facilities available to the Staff College,

Now, therefore, the United Nations and the International Labour Organization hereby agree as follows:

Article 1

The Centre will permit the Staff College, under the terms set out below, to occupy and use, for the purposes of carrying out its functions, the premises in Pavilion T marked out in the attached plan³³ (hereinafter referred to as “the Premises”) and to share with the Centre certain facilities as indicated in the annex to this Agreement.³⁴ The Centre will permit the Staff College to occupy and use the rest of Pavilion “T” once the renovation work of the Centre has been completed.

Article 2

(a) The Staff College shall exercise good care in the use and occupation of the Premises.

(b) The Staff College shall, with respect to those Premises, assume the same obligations as those of the Centre set forth in articles 6 (b), 10, 12 and 14 of the Covenant.

(c) The Staff College shall maintain adequate insurance to cover liability to third parties (including the Centre) for injury, loss and damage resulting from its occupancy and use of the Premises referred to in article 1, attributable to the negligence or wilful misconduct on the part of its officials, employees, contractors, agents and visitors.

Article 3

With respect to the aforementioned Premises, the Staff College may, through the Centre and subject to the latter’s consent which may not be un-

reasonably withheld, exercise the rights given to the Centre under articles 4, 6 (a), 7 (c) and 8 and 10 to 13 of the Covenant.

Article 4

Minor routine repairs of the Premises referred to in article 1 above coming within the responsibilities of the Staff College, in accordance with article 2 of this Agreement read with article 6 (b) of the Covenant, shall be carried out by the Staff College or by the Centre, if so requested by the Staff College. In the latter case, the cost involved, increased by a 13 per cent management fee, shall be reimbursed to the Centre by the Staff College within thirty days of receipt of a monthly invoice.

(a) With respect to works to be carried out by the City of Turin in accordance with article 6 (a) of the Covenant, the Staff College may make specific requests to the Centre taking into account priorities established by the Centre after consultation with the Staff College. The Centre will forward the request to the City of Turin as part of the scheduled work to be carried out on the entire campus;

(b) Any construction and maintenance work to be performed for the Staff College, in the framework of article 4 of the Covenant, shall be carried out under the responsibility of the Centre in close consultation with the Staff College and assisted by a steering committee, following its establishment in accordance with separate arrangements to be concluded between the Staff College and the Centre;

(c) Any kind of new construction or any modification of the existing buildings, including any alteration whatsoever of the external appearance of the Premises, may be done only with the express consent of the Centre;

(d) Neither the Centre nor the ILO shall be liable for loss, damage or personal injury suffered by the Staff College or its officials that is attributable to structural or other defects resulting from any failure by the City of Turin to perform major repairs or normal protection works under article 6 (a) of the Covenant. In such event, the ILO shall represent the interests of the Staff College vis-à-vis the City of Turin.

Article 5

The rights of use and occupation of the aforementioned Premises are conferred on the Staff College (in respect of its officials, employees, contractors, agents and visitors) for its exclusive use in the performance of its mandate. They do not include the right to permit third parties to use the Premises and other facilities provided under this Agreement.

Article 6

The Staff College and the Centre shall carry out their respective activities in a spirit of mutual respect, avoiding any disturbances or unnecessary inconvenience to each other. Both parties commit themselves

to exercise the utmost diligence in keeping each other informed of their respective programmes and activities and in holding regular consultations on matters of mutual concern.

Article 7

The Staff College will meet all expenses arising from its use and occupation of the Premises as well as an equitable proportion of the actual expenses relating to the shared services and facilities. The annex to this Agreement sets out the methods by which the Staff College's contribution to the Centre's fixed costs (section 1) will be calculated, as well as the methods by which certain services rendered to the Staff College or shared with it will be provided by the Centre (section 2).

Article 8

(a) The Staff College shall—as agreed between it and the Centre—share such of the facilities available in the Centre that are necessary for conducting its activities. In this connection, the Centre and the Staff College shall coordinate their activities so as to avoid conflicting demands concerning the use of the Centre's facilities and services at any given time;

(b) Any internal regulations of the Staff College concerning conditions of access and use of the Premises shall be harmonized with those of the Centre;

(c) The Staff College shall pay to the Centre, at six-monthly intervals, an agreed amount corresponding to an estimate of the expenses due as contribution to the fixed costs of the Centre as described in section 1 of the annex to this Agreement;

(d) The ILO's external auditor shall review the above-mentioned amounts charged by the Centre to confirm that they represent an equitable proportion of the actual expenses and that they were calculated in accordance with the methods set out in section 1 of the annex to this Agreement. Such reviews shall be performed annually and the results reported to the Director of the Centre. A copy of the audit report shall be provided to the Director of the Staff College, together with a copy of the breakdown of amounts under each account heading used for the calculation of the share of fixed costs. Should the audit reveal any under- or overpayments, these should be adjusted in the following period;

(e) The additional services that the Centre will provide to the Staff College, as described in section 2 of the annex to this Agreement, will be payable by the Staff College within thirty days of receipt of a monthly invoice.

Article 9

Any dispute relating to the application or interpretation of the present Agreement or of any additional agreement (including arrangements re-

ferred to in article 4 (c) above) shall, if not settled by direct negotiation, be submitted to a board of three arbitrators, one appointed by the Director of the Centre, one by the Director of the Staff College and the Chairperson of the board, who shall be chosen by the other two arbitrators or—failing agreement—jointly by the United Nations Secretary-General and the ILO Director-General. The decision of the arbitrators shall be accepted by both parties as final and binding.

Article 10

Nothing in this Agreement:

(a) Shall be interpreted as derogating the Centre's right of permanent use and occupation of its premises set out in article 3 of the Covenant, including Pavilion "T", without prejudice to the rights expressly conferred on the United Nations or the Staff College by the present Agreement for so long as this Agreement remains in force;

(b) Shall be interpreted or applied in any way that would be incompatible with the Covenant.

Article 11

Any amendment to this Agreement shall be in writing and duly signed by the representatives of the United Nations and the ILO.

Article 12

This Agreement shall enter into force on 1 January 2002 and shall continue in force until the United Nations or the ILO gives the other party at least six (6) months' written notice of termination. The notice period may be reduced, by the United Nations or the ILO respectively, to three (3) months in the case of a serious or persistent breach of this Agreement by the Centre or the Staff College, respectively.

DONE in two original copies on 30 January 2002.

For the United Nations:
[Signature]
Patrizio CIVILI
*Assistant Secretary-General
for Policy Coordination and
Inter-Agency Affairs
United Nations*

*For the International Labour
Organization:*
[Signature]
François TRÉMEAUD
*Executive Director of the ILO
Director of the International
Training Centre in Turin*

(c) Agreement between the International Labour Organization and the Government of the Socialist Republic of Viet Nam on the establishment of an ILO office in Hanoi, Viet Nam.³⁵
Signed on 4 February 2002³⁶

The Government of the Socialist Republic of Viet Nam (hereinafter referred to as “the Government”) and the International Labour Organization (hereinafter referred to as “the ILO”), wishing to conclude an Agreement relating to the establishment of an ILO office in Hanoi, Viet Nam and setting forth the terms and conditions under which the said Office should operate, have agreed as follows:

DEFINITIONS

Article I

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

- (i) “ILO Office” means the ILO organizational unit in Viet Nam established by the ILO Director-General in accordance with this Agreement;
- (ii) “property, funds and assets” shall also include property and funds administered by ILO in the furtherance of its constitutional functions;
- (iii) “Head of the ILO Office” means the official in charge of the ILO Office;
- (iv) “ILO officials” means all members of the staff of ILO employed under the Staff Regulations of the ILO, with the exception of persons recruited locally who are assigned to hourly rates, as provided in General Assembly resolution 76 (1) of 7 December 1946;
- (v) “experts” and “internationally recruited officials” mean all persons, other than government nationals recruited locally, who are assigned by ILO to work in the Office or to execute projects or to perform special missions in a certain period of time;
- (vi) “dependants” includes spouse, dependent children and parents who are wholly dependent on the official, provided they are not engaged in any business, trade or occupation during their stay in Viet Nam;
- (vii) “Parties” means both the Government and ILO;
- (viii) “Party” implies either the Government or ILO.

FUNCTIONS OF THE OFFICE

Article II

1. The activities of the ILO Office in Hanoi, based on active partnership with its tripartite constituents of Viet Nam, namely the Government and the most representative organizations of the workers and employers, will be designed to respond to the needs expressed by the latter with respect to the realization of the country’s objectives in promotion of the prin-

ciples set out in the ILO Constitution and the activities of the Organization's programme of work.

2. In the performance of its functions, the Office shall cooperate with the governmental agencies—of which the Ministry of Labour, War Invalids and Social Affairs or the relevant ministry in charge of labour and employment will be the national contact point—and with the most representative organizations of the workers and employers recognized by the Government of Viet Nam in accordance with the principles underlying paragraph 5 of article 3 of the ILO Constitution.

PRIVILEGES AND IMMUNITIES

Article III

1. The Government shall grant to the ILO and ILO officials performing functions in Viet Nam, as well as its property, funds and assets, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the Specialized Agencies.

2. The Government shall extend to the Head of the ILO Office in Hanoi the same treatment as accorded to heads of office of other international organizations of the United Nations system in Hanoi in accordance with the existing laws of Viet Nam.

3. Without prejudice to the provisions in paragraphs 1 and 2 of this article, the Government shall extend to internationally recruited ILO officials and experts assigned to the ILO Office in Hanoi, and their dependants, the same treatment as accorded generally to the international staff of corresponding rank and status of other international organizations of the United Nations system having offices in Viet Nam.

4. The head of the ILO Office shall be appointed by the ILO Director-General after consulting the Government. ILO shall communicate in due course to the Government the name of the appointed person.

5. With respect to official communications, including the right to dispatch and receive its mail by diplomatic pouch, and to all other matters related to the performance of its functions, the ILO Office in Hanoi shall enjoy treatment no less favourable than that accorded to the other international organizations of the United Nations system having offices in Hanoi.

6. The ILO Office in Hanoi will have such staff as the ILO may deem appropriate for its proper functioning. The ILO shall notify the Government, prior to their arrival and from time to time, of the names of the office's staff, their dependants, their work, and changes in the status of such persons during their stay in the Socialist Republic of Viet Nam.

7. Subject to its laws and regulations concerning zones entry into which is prohibited for reasons of national security, the Government shall ensure the free movement and travel in the Vietnamese territory by all officials of the ILO Office in Hanoi, and their dependants, and shall grant

them the same facilities as those accorded to officials of comparable rank or status in the other international organizations of the United Nations system having offices in Hanoi.

8. The locally recruited staff of the ILO Office in Hanoi shall be accorded the same treatment as that applicable to local staff of comparable status working for the offices of other international organizations of the United Nations system in Viet Nam.

9. All persons who are enjoying the privileges and immunities as provided for in this Agreement shall observe the laws and regulations of the Socialist Republic of Viet Nam. They shall not interfere in the internal affairs of the Socialist Republic of Viet Nam.

Article IV

The Government shall facilitate the entry into, residence in and departure from Viet Nam of all officials of the ILO Office in Hanoi and experts on projects executed or managed by the ILO within the territory of the Socialist Republic of Viet Nam, including their dependants.

Article V

1. The Government shall, to the best of its ability, try to extend every assistance to the ILO by identifying and recommending appropriate premises for the ILO Office in Hanoi as well as providing any other local services in conformity with the practices accorded to other international organizations of the United Nations system having offices in the Socialist Republic of Viet Nam.

2. The Diplomatic Service Department is designated by the Government as its representative in charge of supplying and recommending office headquarters for the ILO Office in Hanoi or residential space for the ILO international staff to rent and providing other local services as it has been doing in relation to the other international organizations of the United Nations system having offices in Hanoi.

OFFICE EXPENDITURE

Article VI

The ILO shall bear the cost of its Office in Hanoi, including all expenditure for leasing and maintaining the office, residential space, its running costs, vehicles, facilities and salary for the staff.

SETTLEMENT OF DISPUTES

Article VII

1. Any dispute between the Government and the ILO arising from or relating to the interpretation or application of this Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to a Board of Arbitration at the request of either party. Each party shall appoint an arbitrator and the two arbitrators so appointed shall appoint a third,

who shall be the Chairman of the Arbitration Board. If within ninety days of the request for arbitration, either party has not appointed any arbitrator, or if within sixty days of the appointment of the two arbitrators, a third arbitrator has failed to have been appointed, either party may request the Secretary-General of the United Nations to appoint an arbitrator.

2. The procedures of the Arbitration Board shall be decided by the arbitrators and the expenses of the Board shall be borne by both 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.

GENERAL PROVISIONS

Article VIII

1. This Agreement shall enter into force upon receipt of the notification of the Government indicating that all internal procedures necessary for the Agreement's entry into force have been completed and shall continue to be valid until its termination in accordance with paragraph 3 of this article. However, this Agreement will be applied provisionally after its signature on behalf of both Parties, pending completion of the Government's internal procedures.

2. This Agreement may be amended upon agreement by both Parties. Such an amendment can be conducted through the exchange of diplomatic notes. Each Party to this Agreement shall give sympathetic consideration to any proposal for its amendment that may be made by the other Party.

3. Either Party may terminate this Agreement by giving written notice to that effect to the other Party. Termination shall take effect at the end of ninety days from the date when notice was received by the other Party or of such period as may be agreed between the Parties for permitting the orderly withdrawal of the ILO's personnel and property, funds and assets in Hanoi and of any other persons performing services on behalf of the ILO in the framework of this Agreement and of their funds and equipment.

IN WITNESS WHEREOF, the authorized representatives of both Parties have signed this Agreement. This Agreement has been done in Hanoi on this 4th day of February 2002, in the Vietnamese and English languages, both texts being equally authentic.

*For and on behalf of the
International Labour Organization:
[Signature]
Y. NODERA
Regional Director
for Asia and the Pacific*

*For and on behalf of
the Government of
the Socialist Republic of Viet Nam:
[Signature]
DINH THI MINH HUYEN
Director,
Department of
International Organizations
Ministry for Foreign Affairs*

3. WORLD HEALTH ORGANIZATION

- (a) Agreement between the Kingdom of Belgium and the World Health Organization concerning the establishment in Belgium of a liaison office of that Organization.³⁷ Signed at Brussels on 6 January 1999

The Kingdom of Belgium (hereinafter called “Belgium”) and the World Health Organization (hereinafter called “WHO”),

Whereas the World Health Organization has opened a liaison office in Brussels (hereinafter called “the WHO Office”);

Whereas special arrangements must be made in respect of the privileges and immunities accorded to the Office in Brussels on Belgian territory;

Desiring to conclude to this effect a supplementary agreement to the Convention on the Privileges and Immunities of the Specialized Agencies including its annex VII concerning the World Health Organization (hereinafter called “the Convention”), to which Belgium acceded on 14 March 1962;

Have agreed as follows:

Article 1

1. The Director of the WHO Office shall enjoy the privileges accorded to members of the diplomatic staff of diplomatic missions. The spouse and minor dependent children of the Director who form part of his household shall enjoy the same benefits as the spouses and minor dependent children of diplomatic staff.

2. Without prejudice to article VI, section 19, of the Convention, the provisions of paragraph 1 above shall not apply to Belgian nationals.

Article 2

The Belgian Government shall facilitate the entry into and residence in Belgium, and departure from that country, of persons invited to visit the WHO Office for official purposes.

Article 3

1. Belgium and WHO shall declare their joint intention of promoting a high level of social protection for Belgian nationals and permanent residents in Belgium, on the one hand, and members of the staff of WHO, on the other.

2. Belgium shall ensure that its nationals, permanent residents and all workers present in its territory are able effectively to exercise the fun-

damental rights listed in the Community Charter of Fundamental Social Rights for Workers, done at Strasbourg in 1989, and the European Social Charter and the Additional Protocol thereto, done at Turin in 1961.

3. WHO shall ensure that each of the members of its staff is able effectively to exercise his fundamental social rights.

4. On the basis of a joint assessment of their respective social protection and social security systems, the signatory parties agree to ensure that the social security scheme applicable to members of the WHO staff guarantees them a minimum level of social protection equivalent to that provided by the Belgian social security system.

5. In the light of the outcome of the assessment referred to in the previous paragraph, members of the WHO staff, other than Belgian nationals and permanent residents in Belgium, who do not exercise any gainful activity in Belgium other than that required by their duties, shall be covered by the social security scheme applicable to the staff of that Organization, subject to the following conditions:

(a) The social security scheme applicable to WHO staff shall recognize the principles of Belgian legislation in respect of the protection of personal data and medical ethics (freedom of choice of the patient, freedom of the health-care provider to decide on treatment, medical confidentiality);

(b) Belgium and WHO shall recognize the uniformity of their social security system and scheme.

6. By way of derogation from the provisions of paragraph 5, and subject to the rules referred to in the declaration annexed to the present Agreement, Belgium and WHO shall ensure that Belgian nationals and permanent residents in Belgium who are members of the staff of the WHO Office in Belgium are covered by the social security scheme applicable to WHO staff, in accordance with the conditions laid down in paragraph 5.

Article 4

Each of the Parties shall notify the other Party of the completion of the procedures required by its legislation for the entry into force of the present Agreement.

IN WITNESS WHEREOF, the Plenipotentiaries have signed this Agreement.

DONE at Brussels, on 6 January 1999, in duplicate in the French language.

Joint Declaration annexed to article 3 of the Agreement between the Kingdom of Belgium and the World Health Organization concerning the establishment in Belgium of a liaison office of that Organization

For the application of article 3 of the Agreement between the Kingdom of Belgium and the World Health Organization concerning the establishment in Belgium of a liaison office of that Organization and the present Joint Declaration, the signatory parties have agreed as follows:

Article 1

DEFINITIONS

“Permanent resident in Belgium” means any person registered for more than six months in the Belgian national register of natural persons.

“Minimum level of equivalent social protection” means a system of social protection which does not provide the range and level of cover provided by the Belgian social security system in respect of unemployment or disability benefits.

Article 2

The derogation referred to in article 3, paragraph 6, of the Agreement between the Kingdom of Belgium and the World Health Organization concerning the establishment in Belgium of a liaison office of that Organization shall continue to apply as long as the results of the assessment mentioned in article 3, paragraph 4, of the said draft agreement ensure that staff members of WHO enjoy a minimum level of social protection equivalent to that provided by the Belgian social security system.

Article 3

Within the framework of the implementation of article 3 of the Agreement between the Kingdom of Belgium and the World Health Organization concerning the establishment in Belgium of a liaison office of that Organization and article 2 of this Joint Declaration, the signatory parties undertake to cooperate closely by exchanging information in the event of significant changes in their respective social security systems which could reduce the range and level of social protection provided for their policyholders.

Every five years, from the date of signature of the above-mentioned Agreement, the signatory parties shall draw up a joint report evaluating their cooperation in this field. The report shall establish whether the condition laid down in article 2 continues to apply.

(b) Framework Agreement on Cooperation between the World Health Organization and the Government of the Kingdom of Spain. Signed at Madrid on 12 September 2001³⁸

Preamble

The Kingdom of Spain (Spain) and the World Health Organization (WHO), hereinafter designated as “The Parties”;

Taking into consideration their mutual interest in promoting health throughout the world and the reciprocal benefits to be derived from their joint cooperation to this end;

Convinced of the importance of establishing mechanisms to contribute to the attainment of this objective;

Have decided to conclude the following Agreement:

Article I

PURPOSE OF THE AGREEMENT

1. The purpose of the Agreement is to further relations between Spain and the Organization in relation to health programmes, projects and activities that are financed by Spain from funding sources other than Spain's assessed contribution to WHO.
2. The Parties undertake to develop and implement, by mutual agreement, health programmes, projects and activities in conformity with WHO's mandate, the decisions of the World Health Assembly and the spirit of the present Framework Agreement.
3. The Parties may, if they deem it necessary, conclude additional agreements relating to cooperation in the field of health.
4. This Framework Agreement shall cover all programmes, projects and activities in the field of public health that are supported by Spain from funding sources other than Spain's assessed contribution to WHO, and that are carried out by WHO in its member States, including Spain, if appropriate.

Article II

JOINT COMMITTEE

1. Both Parties agree to establish a Joint Committee to review cooperation between Spain and WHO in relation to the planning, implementation and evaluation of the programmes, projects and activities mentioned in article I, paragraph 4. In WHO terminology, the Committee will be referred to as the Annual Review Meeting (ARM).
2. The Joint Committee shall review the implementation of the previously agreed upon programmes, projects and activities and shall recommend the appropriate modifications and adjustments. It may also recommend new cooperative programmes, projects and activities, which may be established by the Parties through separate agreements pursuant to article I, paragraph 3, of the present Framework Agreement.
3. The Parties shall be represented equally on the Joint Committee. It shall be chaired alternately by the Chairperson of the delegations of each Party.

For Spain, the Ministry for Foreign Affairs will lead the corresponding delegation, in close collaboration with the Ministry of Health and Consumer Affairs.

For WHO, the Director-General or his/her representative will lead the WHO delegation in close collaboration with the WHO Regional Office for Europe (EURO).

4. The Joint Committee shall meet annually, alternately in Spain and in Switzerland.

Article III

FUNDING

Any programmes, projects or activities resulting from this Agreement shall be funded, as regards that portion for which Spain is responsible, from funding sources other than Spain's assessed contribution to WHO.

Article IV

PRIVILEGES AND IMMUNITIES

1. Spain shall, as appropriate in the implementation of the present Agreement, apply the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, to which it acceded with respect to the World Health Organization on 26 September 1974, to WHO as well as its property, funds, assets, officials and experts.

2. If the nature of the WHO presence in Spain so requires, a specific "*accord de siège*" shall be negotiated and concluded between WHO and Spain.

Article V

SETTLEMENT OF DISPUTES

Any dispute over the interpretation or application of the present Agreement shall be resolved amicably by consultation and negotiation between the Parties.

Article VI

AMENDMENTS

1. The present Agreement may be amended with the written consent of the Parties, at the request of either of them.

2. Any amendments shall enter into force on the date of receipt of the latest notification by one of the Parties to the other that it has fulfilled the corresponding legal and procedural requirements.

Article VII

DENUNCIATION

Either Party may denounce this Agreement by sending written notification of its decision to the other Party. The denunciation shall take effect after a period of six months from the date of receipt by the other Party of notification of the denunciation.

Article VIII

DURATION

This Agreement shall remain in force for an indefinite period.

Article IX

ENTRY INTO FORCE

This Agreement shall enter into force on the date of receipt of the latest notification by one of the Parties to the other that it has fulfilled the corresponding legal and procedural requirements.

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the Parties, have signed this Agreement in two copies each in the Spanish and English languages, both versions being equally authentic.

SIGNED in Madrid on the 12th day of September 2001.

For the Kingdom of Spain:

[Signature]

Celia VILLALOBOS TALERO

Minister of Health and

Consumer Affairs

For the World Health Organization:

[Signature]

Gro HARLEM BRUNDTLAND

Director-General

- (c) Basic Agreement between the World Health Organization and the Government of the Democratic Republic of East Timor for the establishment of technical advisory cooperation relations. Signed at Dili on 20 May 2002³⁹

The World Health Organization (hereinafter referred to as “the Organization”) and the Government of the Democratic Republic of East Timor (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 the purpose and scope of each project and 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 Organization and the Government shall cooperate in arranging, on the basis of the requests received from the Government and approved by the Organization, mutually agreeable plans of operation for the carrying out of the technical advisory cooperation.

2. Such technical advisory cooperation shall 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/consultants in order to render advice and cooperate with the Government or with other parties;

(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 Organization and the Government.

4. (a) Advisers/consultants 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/consultants 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 Organization and the Government;

(c) The advisers/consultants shall, in the course of their advisory work, make every effort to instruct any technical staff of the Government, may associate with them in their professional methods, techniques and practices, and in the principles on which these are based;

(d) 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;

(e) 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 publication, as appropriate, of any findings and reports of advisers/consultants 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 analyse 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 the technical advisory cooperation which are payable outside the country, as follows:

(a) The salaries and subsistence (including duty travel and per diem) of the advisers/consultants;

(b) The costs of transportation of the advisers/consultants 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/consultants;

(e) Purchase and transport to and from the point of entry into the country of any equipment or supplies provided by the Organization;

(f) Any other expenses outside the country approved by the Organization.

2. The Organization shall defray such expenses in local currency as are not covered by the Government pursuant to article IV, paragraph 1, of this Agreement.

3. The Organization shall be free to hire local staff directly from the labour market. Appointments and dismissal of the officials of the Organization shall be governed by the regulations, rules and policies of the Organization.

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 interpreters-cum-translators and related assistance;

(b) The necessary office space and other premises;

- (c) Postage and telecommunications for official purposes;
- (d) Facilities for receiving medical care and hospitalization by 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 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/consultants 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, and shall enjoy the privileges and immunities provided for in section 19 of the Convention. The WHO Representative appointed to East Timor shall be afforded the treatment provided for under section 21 of the said Convention. The relevant provisions of the Convention will apply to the spouses and dependants of officials.

3. It is understood that no action shall be brought against the Organization by the Government or persons acting for or deriving claims from Government. In addition to the obligation undertaken by the Government pursuant to article I, paragraph 6, of the present Agreement, the Government agrees to assert and to protect, on behalf of the Organization, the Organization's immunities whenever those immunities are challenged.

Article VI

1. This Basic Agreement shall enter into force upon signature by the duly authorized representatives of the Organization and of the Government.

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.

DONE in the English language, in three copies, at Dili on this 20 of May 2002.

For the World Health Organization:
[Signature]
Uton Muchtar RAFEI
Regional Director
South-East Asia Region

For the Government of the
Democratic Republic of East Timor:
Jose RAMOS HORTA
Senior Minister for Foreign
Affairs and Cooperation

4. INTERNATIONAL ATOMIC ENERGY AGENCY

Agreement between the International Atomic Energy Agency and the Government of the Republic of Yemen for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Signed at Vienna on 21 September 2000⁴⁰

Whereas the Republic of Yemen (hereinafter referred to as “Yemen”) is a party to the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as “the Treaty”) opened for signature at London, Moscow and Washington on 1 July 1968 and which entered into force on 5 March 1970,

Whereas paragraph 1 of article III of the Treaty reads as follows:

“Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency’s safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied to all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere”.

Whereas the International Atomic Energy Agency (hereinafter referred to as “the Agency”) is authorized, pursuant to article III of its Statute, to conclude such agreements,

Now, therefore, Yemen and the Agency have agreed as follows:

PART I

BASIC UNDERTAKING

Article 1

Yemen undertakes, pursuant to paragraph 1 of article III of the Treaty, to accept safeguards, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear activities within its territory, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

APPLICATION OF SAFEGUARDS

Article 2

The Agency shall have the right and the obligation to ensure that safeguards will be applied, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear activities within the territory of Yemen, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

COOPERATION BETWEEN YEMEN AND THE AGENCY

Article 3

Yemen and the Agency shall cooperate to facilitate the implementation of the safeguards provided for in this Agreement.

IMPLEMENTATION OF SAFEGUARDS

Article 4

The safeguards provided for in this Agreement shall be implemented in a manner designed:

(a) To avoid hampering the economic and technological development of Yemen or international cooperation in the field of peaceful nuclear activities, including international exchange of nuclear material;

(b) To avoid undue interference in Yemen’s peaceful nuclear activities, and in particular in the operation of facilities; and

(c) To be consistent with prudent management practices required for the economic and safe conduct of nuclear activities.

Article 5

(a) The Agency shall take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of this Agreement;

- (b) (i) The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of this Agreement, except that specific information relating to the implementation thereof may be given to the Board of Governors of the Agency (hereinafter referred to as "the Board") and to such Agency staff members as require such knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfil its responsibilities in implementing this Agreement;
- (ii) Summarized information on nuclear material subject to safeguards under this Agreement may be published upon decision of the Board if the States directly concerned agree thereto.

Article 6

(a) The Agency shall, in implementing safeguards pursuant to this Agreement, take full account of technological developments in the field of safeguards, and shall make every effort to ensure optimum cost-effectiveness and the application of the principle of safeguarding effectively the flow of nuclear material subject to safeguards under this Agreement by use of instruments and other techniques at certain strategic points to the extent that present or future technology permits;

(b) In order to ensure optimum cost-effectiveness, use shall be made, for example, of such means as:

- (i) Containment as a means of defining material balance areas for accounting purposes;
- (ii) Statistical techniques and random sampling in evaluating the flow of nuclear materials; and
- (iii) Concentration of verification procedures on those stages in the nuclear fuel cycle involving the production, processing, use or storage of nuclear material from which nuclear weapons or other nuclear explosive devices could readily be made, and minimization of verification procedures in respect of other nuclear material, on condition that this does not hamper the Agency in applying safeguards under this Agreement.

NATIONAL SYSTEM OF MATERIALS CONTROL

Article 7

(a) Yemen shall establish and maintain a system of accounting for and control of all nuclear material subject to safeguards under this Agreement;

(b) The Agency shall apply safeguards in such a manner as to enable it to verify, in ascertaining that there has been no diversion of nuclear material from peaceful uses to nuclear weapons or other nuclear explosive devices, findings of Yemen's system. The Agency's verification shall include, inter alia, independent measurements and observations conducted by the Agency in accordance with the procedures specified in Part II of this Agreement. The Agency, in its verification, shall take due account of the technical effectiveness of Yemen's system.

PROVISION OF INFORMATION TO THE AGENCY

Article 8

(a) In order to ensure the effective implementation of safeguards under this Agreement, Yemen shall, in accordance with the provisions set out in Part II of this Agreement, provide the Agency with information concerning nuclear material subject to safeguards under this Agreement and the features of facilities relevant to safeguarding such material;

(b) (i) The Agency shall require only the minimum amount of information and data consistent with carrying out its responsibilities under this Agreement;

(ii) Information pertaining to facilities shall be the minimum necessary for safeguarding nuclear material subject to safeguards under this Agreement;

(c) If Yemen so requests, the Agency shall be prepared to examine on premises of Yemen design information which Yemen regards as being of particular sensitivity. Such information need not be physically transmitted to the Agency provided that it remains readily available for further examination by the Agency on premises of Yemen.

AGENCY INSPECTORS

Article 9

(a) (i) The Agency shall secure the consent of Yemen to the designation of Agency inspectors to Yemen;

(ii) If Yemen, either upon proposal of a designation or at any other time after a designation has been made, objects to the designation, the Agency shall propose to Yemen an alternative designation or designations;

(iii) If, as a result of the repeated refusal of Yemen to accept the designation of Agency inspectors, inspections to be conducted under this Agreement would be impeded, such refusal shall be considered by the Board, upon referral by the Director General of the Agency (hereinafter referred to as "the Director General"), with a view to its taking appropriate action;

(b) Yemen shall take the necessary steps to ensure that Agency inspectors can effectively discharge their functions under this Agreement;

(c) The visits and activities of Agency inspectors shall be so arranged as:

- (i) To reduce to a minimum the possible inconvenience and disturbance to Yemen and to the peaceful nuclear activities inspected; and
- (ii) To ensure protection of industrial secrets or any other confidential information coming to the inspectors' knowledge.

PRIVILEGES AND IMMUNITIES

Article 10

Yemen shall accord to the Agency (including its property, funds and assets) and to its inspectors and other officials performing functions under this Agreement the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

TERMINATION OF SAFEGUARDS

Article 11

Consumption or dilution of nuclear material

Safeguards shall terminate on nuclear material upon determination by the Agency that the material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable.

Article 12

Transfer of nuclear material out of Yemen

Yemen shall give the Agency advance notification of intended transfers of nuclear material subject to safeguards under this Agreement out of Yemen, in accordance with the provisions set out in Part II of this Agreement. The Agency shall terminate safeguards on nuclear material under this Agreement when the recipient State has assumed responsibility therefore, as provided for in Part II of this Agreement. The Agency shall maintain records indicating each transfer and, where applicable, the reapplication of safeguards to the transferred nuclear material.

Article 13

Provisions relating to nuclear material to be used in non-nuclear activities

Where nuclear material subject to safeguards under this Agreement is to be used in non-nuclear activities, such as the production of alloys or ceramics,

Yemen shall agree with the Agency, before the material is so used, on the circumstances under which the safeguards on such material may be terminated.

NON-APPLICATION OF SAFEGUARDS TO NUCLEAR MATERIAL
TO BE USED IN NON-PEACEFUL ACTIVITIES

Article 14

If Yemen intends to exercise its discretion to use nuclear material which is required to be safeguarded under this Agreement in a nuclear activity which does not require the application of safeguards under this Agreement, the following procedures shall apply:

- (a) Yemen shall inform the Agency of the activity, making it clear:
 - (i) That the use of the nuclear material in a non-proscribed military activity will not be in conflict with an undertaking Yemen may have given and in respect of which Agency safeguards apply, that the material will be used only in a peaceful nuclear activity; and
 - (ii) That during the period of non-application of safeguards the nuclear material will not be used for the production of nuclear weapons or other nuclear explosive devices;

(b) Yemen and the Agency shall make an arrangement so that, only while the nuclear material is in such an activity, the safeguards provided for in this Agreement will not be applied. The arrangement shall identify, to the extent possible, the period or circumstances during which safeguards will not be applied. In any event, the safeguards provided for in this Agreement shall apply again as soon as the nuclear material is reintroduced into a peaceful nuclear activity. The Agency shall be kept informed of the total quantity and composition of such unsafeguarded material in Yemen and of any export of such material; and

(c) Each arrangement shall be made in agreement with the Agency. Such agreement shall be given as promptly as possible and shall relate only to such matters as, inter alia, temporal and procedural provisions and reporting arrangements, but shall not involve any approval or classified knowledge of the military activity or relate to the use of the nuclear material therein.

FINANCE

Article 15

Yemen and the Agency will bear the expenses incurred by them in implementing their respective responsibilities under this Agreement. However, if Yemen or persons under its jurisdiction incur extraordinary expenses as a result of a specific request by the Agency, the Agency shall reimburse such expenses provided that it has agreed in advance to do so. In any case, the Agency shall bear the cost of any additional measuring or sampling which inspectors may request.

THIRD-PARTY LIABILITY FOR NUCLEAR DAMAGE

Article 16

Yemen shall ensure that any protection against third-party liability in respect of nuclear damage, including any insurance or other financial security, which may be available under its laws or regulations shall apply to the Agency and its officials for the purpose of the implementation of this Agreement, in the same way as that protection applies to nationals of Yemen.

INTERNATIONAL RESPONSIBILITY

Article 17

Any claim by Yemen against the Agency or by the Agency against Yemen in respect of any damage resulting from the implementation of safeguards under this Agreement, other than damage arising out of a nuclear incident, shall be settled in accordance with international law.

MEASURES IN RELATION TO VERIFICATION OF NON-DIVERSION

Article 18

If the Board, upon report of the Director General, decides that an action by Yemen is essential and urgent in order to ensure verification that nuclear material subject to safeguards under this Agreement is not diverted to nuclear weapons or other nuclear explosive devices, the Board may call upon Yemen to take the required action without delay, irrespective of whether procedures have been invoked pursuant to article 22 of this Agreement for the settlement of a dispute.

Article 19

If the Board, upon examination of relevant information reported to it by the Director General, finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this Agreement to nuclear weapons or other nuclear explosive devices, it may make the reports provided for in paragraph C of article XII of the Statute of the Agency (hereinafter referred to as “the Statute”) and may also take, where applicable, the other measures provided for in that paragraph. In taking such action the Board shall take account of the degree of assurance provided by the safeguards measures that have been applied and shall afford Yemen every reasonable opportunity to furnish the Board with any necessary reassurance.

INTERPRETATION AND APPLICATION OF THE AGREEMENT AND SETTLEMENT OF DISPUTES

Article 20

Yemen and the Agency shall, at the request of either, consult about any question arising out of the interpretation or application of this Agreement.

Article 21

Yemen shall have the right to request that any question arising out of the interpretation or application of this Agreement be considered by the Board. The Board shall invite Yemen to participate in the discussion of any such question by the Board.

Article 22

Any dispute arising out of the interpretation or application of this Agreement, except a dispute with regard to a finding by the Board under article 19 or an action taken by the Board pursuant to such a finding, which is not settled by negotiation or another procedure agreed to by Yemen and the Agency shall, at the request of either, be submitted to an arbitral tribunal composed as follows: Yemen and the Agency shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If, within thirty days of the request for arbitration, either Yemen or the Agency has not designated an arbitrator, either Yemen or the Agency may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on Yemen and the Agency.

AMENDMENT OF THE AGREEMENT

Article 23

(a) Yemen and the Agency shall, at the request of either, consult each other on amendment to this Agreement.

(b) All amendments shall require the agreement of Yemen and the Agency.

(c) Amendments to this Agreement shall enter into force in the same conditions as entry into force of the Agreement itself.

(d) The Director General shall promptly inform all member States of the Agency of any amendment to this Agreement.

ENTRY INTO FORCE AND DURATION

Article 24

This Agreement shall enter into force on the date upon which the Agency receives from Yemen written notification that Yemen's statutory and constitutional requirements for entry into force have been met. The Director General shall promptly inform all member States of the Agency of the entry into force of this Agreement.

Article 25

This Agreement shall remain in force as long as Yemen is party to the Treaty.

PART II

INTRODUCTION

Article 26

The purpose of this part of the Agreement is to specify the procedures to be applied in the implementation of the safeguards provisions of Part I.

OBJECTIVE OF SAFEGUARDS

Article 27

The objective of the safeguards procedures set forth in this part of the Agreement is the timely detection of diversion of significant quantities of nuclear material from peaceful nuclear activities to the manufacture of nuclear weapons or of other nuclear explosive devices or for purposes unknown, and deterrence of such diversion by the risk of early detection.

Article 28

For the purpose of achieving the objective set forth in article 27, material accountancy shall be used as a safeguards measure of fundamental importance, with containment and surveillance as important complementary measures.

Article 29

The technical conclusion of the Agency's verification activities shall be a statement, in respect of each material balance area, of the amount of material unaccounted for over a specific period, and giving the limits of accuracy of the amounts stated.

NATIONAL SYSTEM OF ACCOUNTING FOR AND
CONTROL OF NUCLEAR MATERIAL

Article 30

Pursuant to article 7 the Agency, in carrying out its verification activities, shall make full use of Yemen's system of accounting for and control of all nuclear material subject to safeguards under this Agreement and shall avoid unnecessary duplication of Yemen's accounting and control activities.

Article 31

Yemen's system of accounting for and control of all nuclear material subject to safeguards under this Agreement shall be based on a structure

of material balance areas, and shall make provision, as appropriate and specified in the Subsidiary Arrangements, for the establishment of such measures as:

(a) A measurement system for the determination of the quantities of nuclear material received, produced, shipped, lost or otherwise removed from inventory, and the quantities on inventory;

(b) The evaluation of precision and accuracy of measurements and the estimation of measurement uncertainty;

(c) Procedures for identifying, reviewing and evaluating differences in shipper/receiver measurements;

(d) Procedures for taking a physical inventory;

(e) Procedures for the evaluation of accumulations of unmeasured inventory and unmeasured losses;

(f) A system of records and reports showing, for each material balance area, the inventory of nuclear material and the changes in that inventory including receipts into and transfers out of the material balance area;

(g) Provisions to ensure that the accounting procedures and arrangements are being operated correctly; and

(h) Procedures for the provision of reports to the Agency in accordance with articles 58-68.

STARTING POINT OF SAFEGUARDS

Article 32

Safeguards under this Agreement shall not apply to material in mining or ore processing activities.

Article 33

(a) When any material containing uranium or thorium which has not reached the stage of the nuclear fuel cycle described in paragraph (c) is directly or indirectly exported to a non-nuclear-weapon State, Yemen shall inform the Agency of its quantity, composition and destination, unless the material is exported for specifically non-nuclear purposes;

(b) When any material containing uranium or thorium which has not reached the stage of the nuclear fuel cycle described in paragraph (c) is imported, Yemen shall inform the Agency of its quantity and composition, unless the material is imported for specifically non-nuclear purposes; and

(c) When any nuclear material of a composition and purity suitable for fuel fabrication or for isotopic enrichment leaves the plant or the process stage in which it has been produced, or when such nuclear material, or any other nuclear material produced at a later stage in the nuclear fuel

cycle, is imported into Yemen, the nuclear material shall become subject to the other safeguards procedures specified in this Agreement.

TERMINATION OF SAFEGUARDS

Article 34

(a) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement, under the conditions set forth in article 11. Where the conditions of that article are not met, but Yemen considers that the recovery of safeguarded nuclear material from residues is not for the time being practicable or desirable, Yemen and the Agency shall consult on the appropriate safeguards measures to be applied;

(b) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement, under the conditions set forth in article 13, provided that Yemen and the Agency agree that such nuclear material is practicably irrecoverable.

EXEMPTIONS FROM SAFEGUARDS

Article 35

At the request of Yemen, the Agency shall exempt nuclear material from safeguards, as follows:

(a) Special fissionable material, when it is used in gram quantities or less as a sensing component in instruments;

(b) Nuclear material, when it is used in non-nuclear activities in accordance with article 13, if such nuclear material is recoverable; and

(c) Plutonium with an isotopic concentration of plutonium-238 exceeding 80 per cent.

Article 36

At the request of Yemen, the Agency shall exempt from safeguards nuclear material that would otherwise be subject to safeguards, provided that the total quantity of nuclear material which has been exempted in Yemen in accordance with this article may not at any time exceed:

(a) One kilogram in total of special fissionable material, which may consist of one or more of the following:

- (i) Plutonium;
- (ii) Uranium with an enrichment of 0.2 (20 per cent) and above, taken account of by multiplying its weight by its enrichment; and
- (iii) Uranium with an enrichment below 0.2 (20 per cent) and above that of natural uranium, taken account of by multiplying its weight by five times the square of its enrichment;

- (b) Ten metric tons in total of natural uranium and depleted uranium with an enrichment above 0.005 (0.5 per cent);
 - (c) Twenty metric tons of depleted uranium with an enrichment of 0.005 (0.5 per cent) or below; and
 - (d) Twenty metric tons of thorium;
- or such greater amounts as may be specified by the Board for uniform application.

Article 37

If exempted nuclear material is to be processed or stored together with nuclear material subject to safeguards under this Agreement, provision shall be made for the reapplication of safeguards thereto.

SUBSIDIARY ARRANGEMENTS

Article 38

Yemen and the Agency shall make Subsidiary Arrangements which shall specify in detail, to the extent necessary to permit the Agency to fulfil its responsibilities under this Agreement in an effective and efficient manner, how the procedures laid down in this Agreement are to be applied. The Subsidiary Arrangements may be extended or changed by agreement between Yemen and the Agency without amendment of this Agreement.

Article 39

The Subsidiary Arrangements shall enter into force at the same time as, or as soon as possible after, the entry into force of this Agreement. Yemen and the Agency shall make every effort to achieve their entry into force within ninety days of the entry into force of this Agreement; an extension of that period shall require agreement between Yemen and the Agency. Yemen shall provide the Agency promptly with the information required for completing the Subsidiary Arrangements. Upon the entry into force of this Agreement, the Agency shall have the right to apply the procedures laid down therein in respect of the nuclear material listed in the inventory provided for in article 40, even if the Subsidiary Arrangements have not yet entered into force.

INVENTORY

Article 40

On the basis of the initial report referred to in article 61, the Agency shall establish a unified inventory of all nuclear material in Yemen subject to safeguards under this Agreement, irrespective of its origin, and shall maintain this inventory on the basis of subsequent reports and of the results of its verification activities. Copies of the inventory shall be made available to Yemen at intervals to be agreed.

DESIGN INFORMATION

GENERAL PROVISIONS

Article 41

Pursuant to article 8, design information in respect of existing facilities shall be provided to the Agency during the discussion of the Subsidiary Arrangements. The time limits for the provision of design information in respect of the new facilities shall be specified in the Subsidiary Arrangements and such information shall be provided as early as possible before nuclear material is introduced into a new facility.

Article 42

The design information to be provided to the Agency shall include, in respect of each facility, when applicable:

(a) The identification of the facility, stating its general character, purpose, nominal capacity and geographic location, and the name and address to be used for routine business purposes;

(b) A description of the general arrangement of the facility with reference, to the extent feasible, to the form, location and flow of nuclear material and to the general layout of important items of equipment which use, produce or process nuclear material;

(c) A description of features of the facility relating to material accountancy, containment and surveillance; and

(d) A description of the existing and proposed procedures at the facility for nuclear material accountancy and control, with special reference to material balance areas established by the operator, measurements of flow and procedures for physical inventory taking.

Article 43

Other information relevant to the application of safeguards shall also be provided to the Agency in respect of each facility, in particular on organizational responsibility for material accountancy and control. Yemen shall provide the Agency with supplementary information on the health and safety procedures which the Agency shall observe and with which the inspectors shall comply at the facility.

Article 44

The Agency shall be provided with design information in respect of a modification relevant for safeguards purposes, for examination, and shall be informed of any change in the information provided to it under article 43, sufficiently in advance for the safeguards procedures to be adjusted when necessary.

Article 45

Purposes of examination of design information

The design information provided to the Agency shall be used for the following purposes:

(a) To identify the features of facilities and nuclear material relevant to the application of safeguards to nuclear material in sufficient detail to facilitate verification;

(b) To determine material balance areas to be used for Agency accounting purposes and to select those strategic points which are key measurement points and which will be used to determine flow and inventory of nuclear material; in determining such material balance areas the Agency shall, *inter alia*, use the following criteria:

- (i) The size of the material balance area shall be related to the accuracy with which the material balance can be established;
- (ii) In determining the material balance area, advantage shall be taken of any opportunity to use containment and surveillance to help ensure the completeness of flow measurements and thereby to simplify the application of safeguards and to concentrate measurement efforts at key measurement points;
- (iii) A number of material balance areas in use at a facility or at distinct sites may be combined in one material balance area to be used for Agency accounting purposes when the Agency determines that this is consistent with its verification requirements; and
- (iv) A special material balance area may be established at the request of Yemen around a process step involving commercially sensitive information;

(c) To establish the nominal timing and procedures for taking of physical inventory of nuclear material for Agency accounting purposes;

(d) To establish the records and reports requirements and records evaluation procedures;

(e) To establish requirements and procedures for verification of the quantity and location of nuclear material; and

(f) To select appropriate combinations of containment and surveillance methods and techniques and the strategic points at which they are to be applied.

The results of the examination of the design information shall be included in the Subsidiary Arrangements.

Article 46

Re-examination of design information

Design information shall be re-examined in the light of changes in operating conditions, of developments in safeguards technology or of ex-

perience in the application of verification procedures, with a view to modifying the action the Agency has taken pursuant to article 45.

Article 47

Verification of design information

The Agency, in cooperation with Yemen, may send inspectors to facilities to verify the design information provided to the Agency pursuant to articles 41-44, for the purposes stated in article 45.

INFORMATION IN RESPECT OF NUCLEAR MATERIAL
OUTSIDE FACILITIES

Article 48

The Agency shall be provided with the following information when nuclear material is to be customarily used outside facilities, as applicable:

(a) A general description of the use of the nuclear material, its geographic location, and the user's name and address for routine business purposes; and

(b) A general description of the existing and proposed procedures for nuclear material accountancy and control, including organizational responsibility for material accountancy and control.

The Agency shall be informed, on a timely basis, of any change in the information provided to it under this article.

Article 49

The information provided to the Agency pursuant to article 48 may be used, to the extent relevant, for the purposes set out in article 45 (b)-(f).

RECORDS SYSTEM
GENERAL PROVISIONS

Article 50

In establishing its system of materials control as referred to in article 7, Yemen shall arrange that records are kept in respect of each material balance area. The records to be kept shall be described in the Subsidiary Arrangements.

Article 51

Yemen shall make arrangements to facilitate the examination of records by inspectors, particularly if the records are not kept in Arabic, English, French, Russian or Spanish.

Article 52

Records shall be retained for at least five years.

Article 53

Records shall consist, as appropriate, of:

- (a) Accounting records of all nuclear material subject to safeguards under this Agreement; and
- (b) Operating records for facilities containing such nuclear material.

Article 54

The system of measurements on which the records used for the preparation of reports are based shall either conform to the latest international standards or be equivalent in quality to such standards.

ACCOUNTING RECORDS

Article 55

The accounting records shall set forth the following in respect of each material balance area:

- (a) All inventory changes, so as to permit a determination of the book inventory at any time;
- (b) All measurement results that are used for determination of the physical inventory; and
- (c) All adjustments and corrections that have been made in respect of inventory changes, book inventories and physical inventories.

Article 56

For all inventory changes and physical inventories the records shall show, in respect of each batch of nuclear material: material identification, batch data and source data. The records shall account for uranium, thorium and plutonium separately in each batch of nuclear material. For each inventory change, the date of the inventory change and, when appropriate, the originating material balance area and the receiving material balance area or the recipient, shall be indicated.

OPERATING RECORDS

Article 57

The operating records shall set forth, as appropriate, in respect of each material balance area:

- Those operating data which are used to establish changes in the quantities and composition of nuclear material;
- The data obtained from the calibration of tanks and instruments and from sampling and analyses, the procedures to control the quality of measurements and the derived estimates of random and systematic error;
- A description of the sequence of the actions taken in preparing for, and in taking, a physical inventory, in order to ensure that it is correct and complete; and

- A description of the actions taken in order to ascertain the cause and magnitude of any accidental or unmeasured loss that might occur.

REPORTS SYSTEM

GENERAL PROVISIONS

Article 58

Yemen shall provide the Agency with reports as detailed in articles 59-68 in respect of nuclear material subject to safeguards under this Agreement.

Article 59

Reports shall be made in Arabic, English, French, Russian or Spanish, except as otherwise specified in the Subsidiary Arrangements.

Article 60

Reports shall be based on the records kept in accordance with articles 50-57 and shall consist, as appropriate, of accounting reports and special reports.

ACCOUNTING REPORTS

Article 61

The Agency shall be provided with an initial report on all nuclear material subject to safeguards under this Agreement. The initial report shall be dispatched by Yemen to the Agency within thirty days of the last day of the calendar month in which this Agreement enters into force, and shall reflect the situation as of the last day of that month.

Article 62

Yemen shall provide the Agency with the following accounting reports for each material balance area:

- Inventory change reports showing all changes in the inventory of nuclear material. The reports shall be dispatched as soon as possible and in any event within thirty days after the end of the month in which the inventory changes occurred or were established; and
- Material balance reports showing the material balance based on a physical inventory of nuclear material actually present in the material balance area. The reports shall be dispatched as soon as possible and in any event within thirty days after the physical inventory has been taken.

The reports shall be based on data available as of the date of reporting and may be corrected at a later date, as required.

Article 63

Inventory change reports shall specify identification and batch data for each batch of nuclear material, the date of the inventory change and, as appropriate, the originating material balance area and the receiving material balance area or the recipient. These reports shall be accompanied by concise notes:

- Explaining the inventory changes, on the basis of the operating data contained in the operating records provided for under article 57 (a); and
- Describing, as specified in the Subsidiary Arrangements, the anticipated operational programme, particularly the taking of a physical inventory.

Article 64

Yemen shall report each inventory change, adjustment and correction, either periodically in a consolidated list or individually. Inventory changes shall be reported in terms of batches. As specified in the Subsidiary Arrangements, small changes in inventory of nuclear material, such as transfers of analytical samples, may be combined in one batch and reported as one inventory change.

Article 65

The Agency shall provide Yemen with semi-annual statements of book inventory of nuclear material subject to safeguards under this Agreement, for each material balance area, as based on the inventory change reports for the period covered by each such statement.

Article 66

Material balance reports shall include the following entries, unless otherwise agreed by Yemen and the Agency:

- (a) Beginning physical inventory;
- (b) Inventory changes (first increases, then decreases);
- (c) Ending book inventory;
- (d) Shipper/receiver differences;
- (e) Adjusted ending book inventory;
- (f) Ending physical inventory; and
- (g) Material unaccounted for.

A statement of the physical inventory, listing all batches separately and specifying material identification and batch data for each batch, shall be attached to each material balance report.

SPECIAL REPORTS

Article 67

Yemen shall make special reports without delay:

(a) If any unusual incident or circumstances lead Yemen to believe that there is or may have been loss of nuclear material that exceeds the limits specified for this purpose in the Subsidiary Arrangements; or

(b) If the containment has unexpectedly changed from that specified in the Subsidiary Arrangements to the extent that unauthorized removal of nuclear material has become possible.

AMPLIFICATION AND CLARIFICATION OF REPORTS

Article 68

If the Agency so requests, Yemen shall provide it with amplifications or clarifications of any report, insofar as relevant for the purpose of safeguards.

INSPECTIONS

GENERAL PROVISIONS

Article 69

The Agency shall have the right to make inspections as provided for in articles 70-81.

PURPOSES OF INSPECTIONS

Article 70

The Agency may make ad hoc inspections in order to:

(a) Verify the information contained in the initial report on the nuclear material subject to safeguards under this Agreement;

(b) Identify and verify changes in the situation which have occurred since the date of the initial report; and

(c) Identify, and if possible verify the quantity and composition of, nuclear material in accordance with articles 92 and 95, before its transfer out of or upon its transfer into Yemen.

Article 71

The Agency may make routine inspections in order to:

(a) Verify that reports are consistent with records;

(b) Verify the location, identity, quantity and composition of all nuclear material subject to safeguards under this Agreement; and

(c) Verify information on the possible causes of material unaccounted for, shipper/receiver differences and uncertainties in the book inventory.

Article 72

Subject to the procedures laid down in article 76, the Agency may make special inspections:

- (a) In order to verify the information contained in special reports; or
- (b) If the Agency considers that information made available by Yemen, including explanations from Yemen and information obtained from routine inspections, is not adequate for the Agency to fulfil its responsibilities under this Agreement.

An inspection shall be deemed to be special when it is either additional to the routine inspection effort provided for in articles 77-81 or involves access to information or locations in addition to the access specified in article 75 for ad hoc and routine inspections, or both.

SCOPE OF INSPECTIONS

Article 73

For the purposes specified in articles 70-72, the Agency may:

- (a) Examine the records kept pursuant to articles 50-57;
- (b) Make independent measurements of all nuclear material subject to safeguards under this Agreement;
- (c) Verify the functioning and calibration of instruments and other measuring and control equipment;
- (d) Apply and make use of surveillance and containment measures; and
- (e) Use other objective methods which have been demonstrated to be technically feasible.

Article 74

Within the scope of article 73, the Agency shall be enabled:

- (a) To observe that samples at key measurement points for material balance accountancy are taken in accordance with procedures which produce representative samples, to observe the treatment and analysis of the samples and to obtain duplicates of such samples;
- (b) To observe that the measurements of nuclear material at key measurement points for material balance accountancy are representative, and to observe the calibration of the instruments and equipment involved;
- (c) To make arrangements with Yemen that, if necessary:
 - (i) Additional measurements are made and additional samples taken for the Agency's use;
 - (ii) The Agency's standard analytical samples are analysed;

- (iii) Appropriate absolute standards are used in calibrating instruments and other equipment; and
- (iv) Other calibrations are carried out;
- (d) To arrange to use its own equipment for independent measurement and surveillance, and if so agreed and specified in the Subsidiary Arrangements to arrange to install such equipment;
- (e) To apply its seals and other identifying and tamper-indicating devices to containments, if so agreed and specified in the Subsidiary Arrangements; and
- (f) To make arrangements with Yemen for the shipping of samples taken for the Agency's use.

ACCESS FOR INSPECTIONS

Article 75

(a) For the purposes specified in article 70 (a) and (b) and until such time as the strategic points have been specified in the Subsidiary Arrangements, the Agency inspectors shall have access to any location where the initial report or any inspections carried out in connection with it indicate that nuclear material is present;

(b) For the purposes specified in article 70 (c) the inspectors shall have access to any location of which the Agency has been notified in accordance with articles 91 (d) (iii) or 94 (d) (iii);

(c) For the purposes specified in article 71 the inspectors shall have access only to the strategic points specified in the Subsidiary Arrangements and to the records maintained pursuant to articles 50-57; and

(d) In the event of Yemen concluding that any unusual circumstances require extended limitations on access by the Agency, Yemen and the Agency shall promptly make arrangements with a view to enabling the Agency to discharge its safeguards responsibilities in the light of these limitations. The Director General shall report each such arrangement to the Board.

Article 76

In circumstances which may lead to special inspections for the purposes specified in article 72, Yemen and the Agency shall consult forthwith. As a result of such consultations the Agency may:

(a) Make inspections in addition to the routine inspection effort provided for in articles 77-81; and

(b) Obtain access, in agreement with Yemen, to information or locations in addition to those specified in article 75. Any disagreement concerning the need for additional access shall be resolved in accordance

with articles 21 and 22; in case action by Yemen is essential and urgent, article 18 shall apply.

FREQUENCY AND INTENSITY OF ROUTINE INSPECTIONS

Article 77

The Agency shall keep the number, intensity and duration of routine inspections, applying optimum timing, to the minimum consistent with the effective implementation of the safeguards procedures set forth in this Agreement, and shall make the optimum and most economical use of inspection resources available to it.

Article 78

The Agency may carry out one routine inspection per year in respect of facilities and material balance areas outside facilities with a content or annual throughput, whichever is greater, of nuclear material not exceeding five effective kilograms.

Article 79

The number, intensity, duration, timing and mode of routine inspections in respect of facilities with a content or annual throughput of nuclear material exceeding five effective kilograms shall be determined on the basis that in the maximum or limiting case the inspection regime shall be no more intensive than is necessary and sufficient to maintain continuity of knowledge of the flow and inventory of nuclear material, and the maximum routine inspection effort in respect of such facilities shall be determined as follows:

(a) For reactors and sealed storage installations the maximum total of routine inspection per year shall be determined by allowing one sixth of a man-year of inspection for each such facility;

(b) For facilities, other than reactors or sealed storage installations, involving plutonium or uranium enriched to more than 5 per cent, the maximum total of routine inspection per year shall be determined by allowing for each such facility $30 \times \sqrt{E}$ man-days of inspection per year, where E is the inventory or annual throughput of nuclear material, whichever is greater, expressed in effective kilograms. The maximum established for any such facility shall not, however, be less than 1.5 man-years of inspection; and

(c) For facilities not covered by paragraphs (a) or (b), the maximum total of routine inspection per year shall be determined by allowing for each such facility one third of a man-year of inspection plus $0.4 \times E$ man-days of inspection per year, where E is the inventory or annual throughput of nuclear material, whichever is greater, expressed in effective kilograms.

Yemen and the Agency may agree to amend the figures for the maximum inspection effort specified in this article, upon determination by the Board that such amendment is reasonable.

Article 80

Subject to articles 77-79, the criteria to be used for determining the actual number, intensity, duration, timing and mode of routine inspections in respect of any facility shall include:

(a) *The form of nuclear material*, in particular, whether the nuclear material is in bulk form or contained in a number of separate items; its chemical composition and, in the case of uranium, whether it is of low or high enrichment; and its accessibility;

(b) *The effectiveness of Yemen's accounting and control system*, including the extent to which the operators of facilities are functionally independent of Yemen's accounting and control system; the extent to which the measures specified in article 31 have been implemented by Yemen; the promptness of reports provided to the Agency; their consistency with the Agency's independent verification; and the amount and accuracy of the material unaccounted for, as verified by the Agency;

(c) *Characteristics of Yemen's nuclear fuel cycle*, in particular, the number and types of facilities containing nuclear material subject to safeguards; the characteristics of such facilities relevant to safeguards, notably the degree of containment; the extent to which the design of such facilities facilitates verification of the flow and inventory of nuclear material; and the extent to which information from different material balance areas can be correlated;

(d) *International interdependence*, in particular, the extent to which nuclear material is received from or sent to other States for use or processing; any verification activities by the Agency in connection therewith; and the extent to which Yemen's nuclear activities are interrelated with those of other States; and

(e) *Technical developments in the field of safeguards*, including the use of statistical techniques and random sampling in evaluating the flow of nuclear material.

Article 81

Yemen and the Agency shall consult if Yemen considers that the inspection effort is being deployed with undue concentration on particular facilities.

NOTICE OF INSPECTIONS

Article 82

The Agency shall give advance notice to Yemen before arrival of inspectors at facilities or material balance areas outside facilities, as follows:

(a) For ad hoc inspections pursuant to article 70 (c), at least 24 hours; for those pursuant to article 70 (a) and (b) as well as the activities provided for in article 47, at least one week;

(b) For special inspections pursuant to article 72, as promptly as possible after Yemen and the Agency have consulted as provided for in article 76, it being understood that notification of arrival normally will constitute part of the consultations; and

(c) For routine inspections pursuant to article 71, at least 24 hours in respect of the facilities referred to in article 79 (b), airtight sealed storage installations containing plutonium or uranium enriched to more than 5 per cent, and one week in all other cases.

Such notice of inspections shall include the names of the inspectors and shall indicate the facilities and the material balance areas outside facilities to be visited and the periods during which they will be visited. If the inspectors are to arrive from outside Yemen, the Agency shall also give advance notice of the place and time of their arrival in Yemen.

Article 83

Notwithstanding the provisions of article 82, the Agency may, as a supplementary measure, carry out without advance notification a portion of the routine inspections pursuant to article 79 in accordance with the principle of random sampling. In performing any unannounced inspections, the Agency shall fully take into account any operational programme provided by Yemen pursuant to article 63 (b). Moreover, whenever practicable, and on the basis of the operational programme, it shall advise Yemen periodically of its general programme of announced and unannounced inspections, specifying the general periods when inspections are foreseen. In carrying out any unannounced inspections, the Agency shall make every effort to minimize any practical difficulties for Yemen and for facility operators, bearing in mind the relevant provisions of articles 43 and 88. Similarly, Yemen shall make every effort to facilitate the task of the inspectors.

DESIGNATION OF INSPECTORS

Article 84

The following procedures shall apply to the designation of inspectors:

(a) The Director General shall inform Yemen in writing of the name, qualifications, nationality, grade and such other particulars as may be relevant, of each Agency official he proposes for designation as an inspector for Yemen;

(b) Yemen shall inform the Director General within thirty days of the receipt of such a proposal whether it accepts the proposal;

(c) The Director General may designate each official who has been accepted by Yemen as one of the inspectors for Yemen, and shall inform Yemen of such designations; and

(d) The Director General, acting in response to a request by Yemen or on his own initiative, shall immediately inform Yemen of the withdrawal of the designation of any official as an inspector for Yemen.

However, in respect of inspectors needed for the activities provided for in article 47 and to carry out ad hoc inspections pursuant to article 70 (a) and (b), the designation procedures shall be completed if possible within thirty days after the entry into force of this Agreement. If such designation appears impossible within this time limit, inspectors for such purposes shall be designated on a temporary basis.

Article 85

Yemen shall grant or renew as quickly as possible appropriate visas, where required, for each inspector designated for Yemen.

CONDUCT AND VISITS OF INSPECTORS

Article 86

Inspectors, in exercising their functions under articles 47 and 70-74, shall carry out their activities in a manner designed to avoid hampering or delaying the construction, commissioning or operation of facilities, or affecting their safety. In particular, inspectors shall not operate any facility themselves or direct the staff of a facility to carry out any operation. If inspectors consider that in pursuance of articles 73 and 74, particular operations in a facility should be carried out by the operator, they shall make a request therefor.

Article 87

When inspectors require services available in Yemen, including the use of equipment, in connection with the performance of inspections, Yemen shall facilitate the procurement of such services and the use of such equipment by inspectors.

Article 88

Yemen shall have the right to have inspectors accompanied during their inspections by representatives of Yemen, provided that inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

STATEMENTS ON THE AGENCY'S VERIFICATION ACTIVITIES

Article 89

The Agency shall inform Yemen of:

(a) The results of inspections, at intervals to be specified in the Subsidiary Arrangements; and

(b) The conclusions it has drawn from its verification activities in Yemen, in particular by means of statements in respect of each material balance area, which shall be made as soon as possible after a physical inventory has been taken and verified by the Agency and a material balance has been struck.

INTERNATIONAL TRANSFERS

GENERAL PROVISIONS

Article 90

Nuclear material subject or required to be subject to safeguards under this Agreement which is transferred internationally shall, for purposes of this Agreement, be regarded as being the responsibility of Yemen:

(a) In the case of import into Yemen, from the time that such responsibility ceases to lie with the exporting State, and no later than the time at which the material reaches its destination; and

(b) In the case of export out of Yemen, up to the time at which the recipient State assumes such responsibility, and no later than the time at which the nuclear material reaches its destination.

The point at which the transfer of responsibility will take place shall be determined in accordance with suitable arrangements to be made by the States concerned. Neither Yemen nor any other State shall be deemed to have such responsibility for nuclear material merely by reason of the fact that the nuclear material is in transit on or over its territory, or that it is being transported on a ship under its flag or in its aircraft.

TRANSFERS OUT OF YEMEN

Article 91

(a) Yemen shall notify the Agency of any intended transfer out of Yemen of nuclear material subject to safeguards under this Agreement if the shipment exceeds one effective kilogram, or if, within a period of three months, several separate shipments are to be made to the same State, each of less than one effective kilogram but the total of which exceeds one effective kilogram;

(b) Such notification shall be given to the Agency after the conclusion of the contractual arrangements leading to the transfer and normally at least two weeks before the nuclear material is to be prepared for shipping;

(c) Yemen and the Agency may agree on different procedures for advance notification;

(d) The notification shall specify:

(i) The identification and, if possible, the expected quantity and composition of the nuclear material to be transferred, and the material balance area from which it will come;

- (ii) The State for which the nuclear material is destined;
- (iii) The dates on and locations at which the nuclear material is to be prepared for shipping;
- (iv) The approximate dates of dispatch and arrival of the nuclear material; and
- (v) At what point of the transfer the recipient State will assume responsibility for the nuclear material for the purpose of this Agreement, and the probable date on which that point will be reached.

Article 92

The notification referred to in article 91 shall be such as to enable the Agency to make, if necessary, an ad hoc inspection to identify, and if possible verify the quantity and composition of, the nuclear material before it is transferred out of Yemen and, if the Agency so wishes or Yemen so requests, to affix seals to the nuclear material when it has been prepared for shipping. However, the transfer of the nuclear material shall not be delayed in any way by any action taken or contemplated by the Agency pursuant to such a notification.

Article 93

If the nuclear material will not be subject to Agency safeguards in the recipient State, Yemen shall make arrangements for the Agency to receive, within three months of the time when the recipient State accepts responsibility for the nuclear material from Yemen, confirmation by the recipient State of the transfer.

TRANSFERS INTO YEMEN

Article 94

(a) Yemen shall notify the Agency of any expected transfer into Yemen of nuclear material required to be subject to safeguards under this Agreement if the shipment exceeds one effective kilogram, or if, within a period of three months, several separate shipments are to be received from the same State, each of less than one effective kilogram but the total of which exceeds one effective kilogram;

(b) The Agency shall be notified as much in advance as possible of the expected arrival of the nuclear material, and, in any case, not later than the date on which Yemen assumes responsibility for the nuclear material;

(c) Yemen and the Agency may agree on different procedures for advance notification;

(d) The notification shall specify:

- (i) The identification and, if possible, the expected quantity and composition of the nuclear material;

- (ii) At what point of the transfer Yemen will assume responsibility for the nuclear material for the purpose of this Agreement, and the probable date on which that point will be reached; and
- (iii) The expected date of arrival, the location where, and the date on which, the nuclear material is intended to be unpacked.

Article 95

The notification referred to in article 94 shall be such as to enable the Agency to make, if necessary, an ad hoc inspection to identify, and if possible verify the quantity and composition of, the nuclear material at the time the consignment is unpacked. However, unpacking shall not be delayed by any action taken or contemplated by the Agency pursuant to such a notification.

SPECIAL REPORTS

Article 96

Yemen shall make a special report as envisaged in article 67 if any unusual incident or circumstances lead Yemen to believe that there is or may have been loss of nuclear material, including the occurrence of significant delay, during an international transfer.

DEFINITIONS

Article 97

For the purposes of this Agreement:

A. “adjustment” means an entry into an accounting record or a report showing a shipper/receiver difference or material unaccounted for;

B. “annual throughput” means, for the purposes of articles 78 and 79, the amount of nuclear material transferred annually out of a facility working at nominal capacity;

C. “batch” means a portion of nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of specifications or measurements. The nuclear material may be in bulk form or contained in a number of separate items;

D. “batch data” means the total weight of each element of nuclear material and, in the case of plutonium and uranium, the isotopic composition when appropriate. The units of account shall be as follows:

(a) Grams of contained plutonium;

(b) Grams of total uranium and grams of contained uranium-235 plus uranium-233 for uranium enriched in these isotopes; and

(c) Kilograms of contained thorium, natural uranium or depleted uranium.

For reporting purposes the weights of individual items in the batch shall be added together before rounding to the nearest unit;

E. “book inventory” of a material balance area means the algebraic sum of the most recent physical inventory of that material balance area and of all inventory changes that have occurred since that physical inventory was taken;

F. “correction” means an entry into an accounting record or a report to rectify an identified mistake or to reflect an improved measurement of a quantity previously entered into the record or report. Each correction must identify the entry to which it pertains;

G. “effective kilogram” means a special unit used in safeguarding nuclear material. The quantity in effective kilograms is obtained by taking:

(a) For plutonium, its weight in kilograms;

(b) For uranium with an equivalent of 0.01 (1 per cent) and above, its weight in kilograms multiplied by the square of its enrichment;

(c) For uranium with an enrichment below 0.01 (1 per cent) and above 0.005 (0.5 per cent), its weight in kilograms multiplied by 0.0001; and

(d) For depleted uranium with an enrichment of 0.005 (0.5 per cent) or below, and for thorium, its weight in kilograms multiplied by 0.00005;

H. “enrichment” means the ratio of the combined weight of the isotopes uranium-233 and uranium-235 to that of the total uranium in question;

I. “facility” means:

(a) A reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation; or

(b) Any location where nuclear material in amounts greater than one effective kilogram is customarily used;

J. “inventory change” means an increase or decrease, in terms of batches, of nuclear material in a material balance area; such a change shall involve one of the following:

(a) Increases:

(i) Import;

(ii) Domestic receipt: receipts from other material balance areas, receipts from a non-safeguarded (non-peaceful) activity or receipts at the starting point of safeguards;

(iii) Nuclear production: production of special fissionable material in a reactor; and

- (iv) De-exemption: reapplication of safeguards on nuclear material previously exempted therefrom on account of its use or quantity;
- (b) Decreases:
 - (i) Export;
 - (ii) Domestic shipment: shipments to other material balance areas or shipments for a non-safeguarded (non-peaceful) activity;
 - (iii) Nuclear loss: loss of nuclear material due to its transformation into other elements(s) or isotope(s) as a result of nuclear reactions;
 - (iv) Measured discard: nuclear material which has been measured, or estimated on the basis of measurements, and disposed of in such a way that it is not suitable for further nuclear use;
 - (v) Retained waste: nuclear material generated from processing or from an operational accident, which is deemed to be unrecoverable for the time being but which is stored;
 - (vi) Exemption: exemption of nuclear material from safeguards on account of its use or quantity; and
 - (vii) Other loss: for example, accidental loss (that is, irretrievable and inadvertent loss of nuclear material as the result of an operational accident) or theft;

K. “key measurement point” means a location where nuclear material appears in such a form that it may be measured to determine material flow or inventory. Key measurement points thus include, but are not limited to, the inputs and outputs (including measured discards) and storages in material balance areas;

L. “man-year of inspection” means, for the purposes of article 79, 300 man-days of inspection, a man-day being a day during which a single inspector has access to a facility at any time for a total of not more than eight hours;

M. “material balance area” means an area in or outside of a facility such that:

(a) The quantity of nuclear material in each transfer into or out of each material balance area can be determined; and

(b) The physical inventory of nuclear material in each material balance area can be determined when necessary, in accordance with specified procedures,

in order that the material balance for Agency safeguards purposes can be established;

N. “material unaccounted for” means the difference between book inventory and physical inventory;

O. “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 article XX of the Statute after the entry into force of this Agreement which adds to the materials considered to be source material or special fissionable material shall have effect under this Agreement only upon acceptance by Yemen;

P. “physical inventory” means the sum of all the measured or derived estimates of batch quantities of nuclear material on hand at a given time within a material balance area, obtained in accordance with specified procedures;

Q. “shipper/receiver difference” means the difference between the quantity of nuclear material in a batch as stated by the shipping material balance area and as measured at the receiving material balance area;

R. “source data” means those data, recorded during measurement or calibration or used to derive empirical relationships, which identify nuclear material and provide batch data. Source data may include, for example, weight of compounds, conversion factors to determine weight of element, specific gravity, element concentration, isotopic ratios, relationship between volume and manometer readings and relationship between plutonium produced and power generated;

S. “strategic point” means a location selected during examination of design information where, under normal conditions and when combined with the information from all strategic points taken together, the information necessary and sufficient for the implementation of safeguards measures is obtained and verified; a strategic point may include any location where key measurements related to material balance accountability are made and where containment and surveillance measures are executed.

DONE at Vienna, on the 21st day of September 2000, in duplicate, in the Arabic and English languages, both texts being equally authentic.

For the Republic of Yemen:
[Signature]
Moustapha Yahya BAHRAN
*Presidential Adviser for Science
and Technology*
*Chairman of the National Atomic
Energy Commission*

*For the International Atomic
Energy Agency:*
[Signature]
Mohamed ELBARADEI
Director General

PROTOCOL

The Republic of Yemen (hereinafter referred to as “Yemen”) and the International Atomic Energy Agency (hereinafter referred to as “the Agency”) have agreed as follows:

I. (1) Until such time as Yemen has, in peaceful nuclear activities within its territory or under its jurisdiction or control anywhere,

(a) Nuclear material in quantities exceeding the limits stated, for the type of material in question, in article 36 of the Agreement between Yemen and the Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as “the Agreement”), or

(b) Nuclear material in a facility as defined in the Definitions, the implementation of the provisions of Part II of the Agreement shall be held in abeyance, with the exception of articles 32, 33, 38, 41 and 90.

(2) The information to be reported pursuant to paragraphs (a) and (b) of article 33 of the Agreement may be consolidated and submitted in an annual report; similarly, an annual report shall be submitted, if applicable, with respect to the import and export of nuclear material described in paragraph (c) of article 33.

(3) In order to enable the timely conclusion of the Subsidiary Arrangements provided for in article 38 of the Agreement, Yemen shall notify the Agency sufficiently in advance of its having nuclear material in peaceful nuclear activities within its territory or under its jurisdiction or control anywhere in quantities that exceed the limits or six months before nuclear material is to be introduced into a facility, as referred to in section (1) hereof, whichever occurs first.

II. This Protocol shall be signed by the representatives of Yemen and the Agency and shall enter into force on the same date as the Agreement.

DONE at Vienna, on the 21st day of September 2000, in duplicate, in the Arabic and English languages, both texts being equally authentic.

For the Republic of Yemen:

[Signature]

Moustapha Yahya BAHRAN

*Presidential Adviser for Science
and Technology*

*Chairman of the National Atomic
Energy Commission*

For the International Atomic

Energy Agency:

[Signature]

Mohamed ELBARADEI
Director General

NOTES

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

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

³ For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General of the United Nations: Status as at 31 December 2002* (United Nations publication, Sales No. E.03.V.3).

⁴ Came into force on 9 January 2002.

⁵ Came into force on 25 January 2002.

⁶ The annexes are not included.

- ⁷ Came into force on 11 April 2002.
- ⁸ Came into force on 19 February 2002.
- ⁹ Came into force provisionally on 25 February 2002 by signature.
- ¹⁰ The annexes are not included.
- ¹¹ Came into force on 22 March 2002.
- ¹² Came into force on 11 April 2002.
- ¹³ Came into force on 18 April 2002.
- ¹⁴ Came into force on 30 April 2002.
- ¹⁵ The annex is not included.
- ¹⁶ Came into force on 3 May 2002.
- ¹⁷ Came into force on 14 May 2002.
- ¹⁸ The annexes are not included.
- ¹⁹ Came into force on 15 May 2002.
- ²⁰ Came into force on 20 May 2002.
- ²¹ Came into force from 20 May 2002 until 30 June 2004.
- ²² Came into force on 17 July 2002.
- ²³ Came into force on 9 August 2002.
- ²⁴ The annexes are not included.
- ²⁵ Came into force on 15 October 2002.
- ²⁶ Came into force on 13 November 2002.
- ²⁷ Came into force on 2 December 2002.
- ²⁸ Came into force on 19 December 2002.
- ²⁹ United Nations, *Treaty Series*, vol. 33, p. 261.
- ³⁰ For the complete list of States, see *Multilateral Treaties Deposited with the Secretary-General of the United Nations: Status as at 31 December 2002* (United Nations publication, Sales No. E.03.V.3).
- ³¹ Came into force on 1 January 2002.
- ³² The appendix is not included.
- ³³ The plan is not included.
- ³⁴ The annex is not included.
- ³⁵ ILO, *Official Bulletin*, 2002, vol. LXXXV, Series A, No. 1, p. 29; English, French, Spanish.
- ³⁶ For entry into force, see art. VIII, para. 1.
- ³⁷ Came into force on 15 March 2002.
- ³⁸ Came into force on 24 June 2002.
- ³⁹ Came into force on 20 May 2002.
- ⁴⁰ Came into force on 14 August 2002.

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 MATTERS¹

(a) Nuclear disarmament and non-proliferation issues

Despite efforts on the part of Member States, the Conference on Disarmament was unable to agree on a substantive programme of work. The deadlock, which had existed in the Conference for four consecutive years, prevented the establishment of subsidiary bodies to deal with any items on the agenda, including nuclear disarmament. Consequently, the issue of nuclear disarmament was addressed by delegations only at plenary meetings.

The first session of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons of 1968² was held in New York in April 2002, where slow progress in nuclear disarmament was noted.

Noting that in June 2002, the United States had withdrawn from the Treaty on the Limitation of Anti-Ballistic Missile Systems of 1972³ and refused to ratify the second Strategic Arms Reduction Treaty of 1993 (START II),⁴ the Russian Federation declared itself no longer bound by the obligation under international law to refrain from any action that would deprive the START II Treaty of its objective goal. The START II Treaty would have reduced the parties' strategic nuclear warheads to no more than 3,000 to 3,500 each.

Other developments, however, had positive effects on progress in the area. In June 2002, the leaders of the Group of Eight (G-8)⁵ agreed on a Global Partnership against the Spread of Weapons and Materials of Mass Destruction. Under the initiative, the G-8 Governments committed to raise up to \$20 billion over 10 years to support specific cooperation projects, initially in the Russian Federation, to address non-proliferation, disarmament, counter-terrorism and nuclear safety issues. Moreover, at the bilateral level, the Russian Federation and the United States signed the Treaty

on Strategic Offensive Reductions (SORT or Moscow Treaty)⁶ in May 2002, whereby the two parties pledged to reduce and limit their deployed strategic nuclear warheads to a level of 1,700-2,000 by December 2012.

The International Code of Conduct against Ballistic Missile Proliferation (ICOC) was launched in November 2002,⁷ and all States Members of the United Nations were invited to subscribe to ICOC. While a political agreement, rather than a legally binding obligation, the Code calls on subscribing States to curb and prevent the proliferation of ballistic missiles capable of delivering weapons of mass destruction and to exercise maximum possible restraint in the development, testing and deployment of those missiles. The Code further recognizes that States should not be excluded from utilizing the benefits of space for peaceful purposes.

With regard to IAEA safeguards, since the approval of the Model Protocol Additional to the Agreement(s) between State(s) and IAEA for the Application of Safeguards⁸ by the IAEA Board of Governors in May 1997, progress in signing and bringing it into force has been slow. At the end of 2002, 66 States had signed the Additional Protocol, including the five nuclear-weapon States and one State (Cuba) with a non-comprehensive safeguards agreement. The Additional Protocol was in force in 28 States.

Consideration by the General Assembly

At its fifty-seventh session, in 2002, the General Assembly, on the recommendation of the First Committee, took action on 14 draft resolutions and one decision dealing with nuclear disarmament and non-proliferation issues.

The draft of resolution 57/97, entitled “The risk of nuclear proliferation in the Middle East”, had been introduced in the First Committee by Egypt on behalf of the States Members of the United Nations that are members of the League of Arab States. India, on behalf of the sponsors, had introduced resolution 57/84, entitled “Reducing nuclear danger”.

Ireland, on behalf of the sponsors, had introduced the draft of General Assembly resolution 57/58, entitled “Reduction of non-strategic nuclear weapons”. Following the adoption of the draft by the First Committee, the United States spoke, on behalf of France and the United Kingdom, in explanation of their negative vote, pointing out that the draft had taken a flawed approach to dealing with reductions in that category of weapon and had failed to take into account progress and present efforts, such as the NATO-Russia Council discussions on nuclear confidence-building measures, and the recent dialogue on transparency in the United States–Russia Consultative Group for Strategic Security. Australia, Canada, Lithuania and the Russian Federation also explained their abstentions. Ireland, on behalf of the sponsors, had further introduced draft resolution 57/59, entitled “Towards a nuclear-weapon-free world: the need for a new agenda”. Germany, prior to the vote on the draft, explained its decision to abstain. It held

that nuclear disarmament could only be achieved by a gradual, step-by-step approach, a fundamental point that the draft disregarded. Following the vote, the United Kingdom, speaking on behalf of the United States and France, emphasized that their commitments to non-proliferation remained rooted in the Non-Proliferation Treaty, and that they had voted against the draft resolution because many of the new elements were not part of the Final Document of the NPT Review Conference held in 2000.

(b) Biological and chemical weapons

The Fifth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 1972 (Biological Weapons Convention)⁹ successfully concluded in 2002, adopting a Final Report setting out a fresh approach to combat the deliberate use of disease as a weapon. Furthermore, to contribute to a better understanding of the issues involved, the United Nations Department of Disarmament Affairs organized a symposium on “The Biological Weapons Convention and Bio-Terrorism” in January 2002. Moreover, in May 2002, the World Health Assembly adopted resolution WHA55.16, entitled “Global public health response to natural occurrence, accidental release or deliberate use of biological and chemical agents or radionuclear material that affect health”. The resolution mandates WHO to strengthen global surveillance of infectious diseases, water quality and food safety by coordinating relevant information-gathering, by providing support to laboratory networks and by making a strong contribution to any international humanitarian response, as required.

During 2002, there was considerable progress towards the elimination of chemical weapons, especially in efforts to accelerate their destruction, and, since the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 1992 (Chemical Weapons Convention),¹⁰ States parties have destroyed approximately 7,140 metric tons of chemical agents, including binary components, or more than 10 per cent of the total declared global stockpile, under the verification of the Organization for the Prohibition of Chemical Weapons (OPCW). In addition, of approximately 8,624,000 munitions and containers declared to the Organization, over 1,896,000, or more than 20 per cent of the total global stockpile, had been verifiably destroyed. Regarding the Organization’s preparedness to provide assistance in the case of use or threat of use of chemical weapons, OPCW had been actively working to improve its readiness, not only in actual emergencies but also in the area of capacity-building.

The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), which had been established in December 1999, pursuant to Security Council resolution 1284 (1999) as a subsidiary body of

the Council to assume responsibilities originally mandated to the United Nations Special Commission (UNSCOM), resumed inspections and monitoring in Iraq in November 2002. On 7 December, pursuant to Council resolution 1441 (2002), Iraq submitted to UNMOVIC, IAEA and the Security Council its declaration, including supporting documents. The Chairman, Hans Blix, concluded that UNMOVIC experts had found little new significant information in the part of the declaration relating to proscribed weapons programmes, nor much new supporting documentation or other evidence. New material was provided concerning non-weapons-related activities during the period from the end of 1998 onwards, especially in the biological field and on missile development. In the assessment of UNMOVIC, as there was little new substantive information in the part of the declaration dealing with weapons, or new supporting documentation, the issues that had been identified as unresolved in the Amorim report¹¹ and in the report of UNSCOM¹² issued in 1999 remained.¹³ In the area of the export/import of goods by Iraq, the UNMOVIC/IAEA joint unit continued to receive notifications from Member States of supplies to Iraq of dual-use items. The unit also continued to review all contracts concluded with the Government of Iraq under the provisions of Security Council resolution 986 (1995) and to provide technical assistance to the Office of the Iraq Programme and to Member States. With the adoption of Council resolution 1409 (2002) in May, in which the Council approved the revised goods review list¹⁴ and revised procedures for its application, the role of UNMOVIC was widened, in that UNMOVIC, and IAEA, began to evaluate applications to be financed from the escrow account established pursuant to Security Council resolution 986 (1995).

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly adopted a decision on the Biological Weapons Convention and a resolution on the Chemical Weapons Convention, as well as resolution 57/62, entitled “Measures to uphold the authority of the 1925 Geneva Protocol”, which had been introduced by South Africa, on behalf of the States Members of the United Nations that are members of the Movement of Non-Aligned Countries.

(c) Conventional weapons issues

The implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, adopted in 2001, generated a renewed momentum in the efforts by the international community to address the problem of small arms and light weapons. Many activities during 2002 were undertaken within the framework of the Group of Interested States in Practical Disarmament Measures,¹⁵ while others, particularly in Africa, were aimed at assisting States in curbing the illicit traffic in small arms and collecting them.¹⁶

Pursuant to the decision by the Second Review Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980 (Convention on Certain Conventional Weapons),¹⁷ an open-ended group of governmental experts was established to address the issue of explosive remnants of war and to explore the issue of mines other than anti-personnel mines.¹⁸ During 2002, there also were several developments in the field of anti-personnel landmines. The Fourth Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction¹⁹ of 1997 (Mine-Ban Convention) was held in September, where the general status and operation of the Convention was reviewed.²⁰ In addition, the Fourth Annual Conference of the States Parties to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Amended Protocol II) of 1996²¹ to the Convention on Certain Conventional Weapons met in December 2002, where the status and operation of Amended Protocol II was reviewed.²²

During 2002, the tenth consolidated report of the Secretary-General on the United Nations Register of Conventional Arms for 2001²³ was made available. Information was provided by 125 Governments on imports and exports in the seven categories of conventional arms covered by the Register. However, Member States continued to have differences, especially concerning the question of expanding the scope of the Register to include data on military holdings and procurement through national production on the same basis as data on transfers. The question of the inclusion of weapons of mass destruction also continued to be controversial.

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, established in 1996 and based in Vienna, held its eighth plenary meeting in December 2002. Several initiatives to combat terrorism were adopted at the meeting, including an agreement to intensify ongoing cooperation to prevent the acquisition of conventional arms and dual-use goods and technologies by terrorist groups and organizations, as well as by individual terrorists. It was also decided to review the adequacy of existing Wassenaar Arrangement guidelines regarding Man-Portable Air Defence Systems (MANPADS) in preventing terrorist use of such systems.

Consideration by the General Assembly

During the fifty-seventh session, the General Assembly, on the recommendation of the First Committee, took action on seven draft resolutions, including 57/70, entitled “Assistance to States for curbing the illicit trade in small arms and light weapons”, which had been introduced by Mali, on behalf of the sponsors, and resolution 57/72, entitled “The illicit

trade in small arms and light weapons in all its aspects”, which had been introduced by Japan, on behalf of the sponsors. Germany, on behalf of the sponsors, had introduced General Assembly resolution 57/81, entitled “Consolidation of peace through practical disarmament measures”. Draft resolution 57/66, entitled “National legislation on transfer of arms, military equipment and dual-use goods and technology”, had been introduced by the Netherlands. Speaking before the vote in the Committee on the last resolution, Kuwait, on behalf of the States Members of the United Nations that were members of the League of Arab States, explained that they would vote in favour of the draft as a whole, because its message supported efforts towards the non-proliferation of weapons of mass destruction consistent with States parties’ commitments under relevant international instruments; however, they would abstain from voting on preambular paragraph 2. Jordan and Algeria associated themselves with the statement of Kuwait and the Islamic Republic of Iran made a statement in a similar vein. Canada and Australia strongly supported the draft, and their position was endorsed by Denmark speaking on behalf of the European Union.

(d) Regional disarmament

Africa

The Security Council continued to be actively involved in resolving conflicts, and promoting durable peace, security and sustainable development on the African continent, particularly as regards the situations in Burundi, the Democratic Republic of the Congo, Guinea, Guinea-Bissau, Liberia, Sierra Leone, Somalia, and the Eritrea-Ethiopia conflict.

During the year, the Organization of African Unity became the African Union, which held the First Ordinary Session of its Assembly of Heads of State and Government in Durban, South Africa, in July 2002. The new organization continued to play the primary role in addressing the various disputes and armed conflicts which continued to threaten peace and security on the continent.

At the subregional level, the Economic Community of West African States (ECOWAS) continued to address peace and security issues in the region and, at the Fifth Extraordinary Session of the Council of Ministers in April 2002, the Council reviewed the political and security situation in the subregion, especially the situations in Côte d’Ivoire and the Mano River Union countries²⁴ and the activities of the ECOWAS Mechanism for the Prevention, Management and Resolution of Conflicts—Peacekeeping and Security. ECOWAS also continued to coordinate the implementation of its Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa, and urged member States to comply fully with the provisions of the Moratorium and the Code of Conduct.²⁵

The Americas

In June 2002, the General Assembly of the Organization of American States (OAS) adopted a resolution on the consolidation of the regime established in the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean of 1967 (Treaty of Tlatelolco),²⁶ urging the States that had not done so to deposit their instruments of ratification at the earliest date. The resolution also reaffirmed the importance of strengthening the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean as the appropriate legal and political forum for ensuring unqualified observance of the Treaty and of its commitment to continue striving for a non-proliferation regime that was universal, genuine and non-discriminatory in every respect. Furthermore, with Cuba's ratification of the Treaty and its amendments and the deposit of its instrument of ratification in October 2002, the Treaty entered into force for all countries in Latin America and the Caribbean. Additionally, OAS continued its peace, security and disarmament activities in the hemisphere, and, by its resolution AG/RES.1877 (XXXII-0/02), adopted in June 2002, expressed its support for the work of the Inter-American Committee against Terrorism and reaffirmed its commitment to implement specific measures to prevent, combat and eliminate international terrorism.

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLiREC)²⁷ continued to serve the countries in the region by promoting subregional, regional and cross-regional activities and to play a proactive role in the establishment of a more secure environment for social and economic development in the region. During the year, the Centre consolidated its Regional Clearing-house Programme on Firearms, Ammunition and Explosives, a programme designed to serve as a tool for nurturing national and regional expertise in the field of practical disarmament measures.

Asia and the Pacific

Activities related to conventional arms and confidence-building in Asia and the Pacific were undertaken by States at the national level, as well as within the framework of subregional organizations or multilateral forums such as the Association of Southeast Asian Nations (ASEAN) and its Regional Forum and the newly formed Shanghai Cooperation Organization. The eighth ASEAN Summit of Heads of State and Government, held in November 2002, adopted a Declaration on Terrorism, condemning the terrorist attacks in Bali and expressing its members' determination to implement the specific measures outlined in the ASEAN Declaration on Joint Action to Counter Terrorism, adopted in November 2001. In the Work Programme on Terrorism to Implement the ASEAN Plan of Action to Combat Transnational Crime, issued in May 2002, the ASEAN countries decided to strengthen cooperation, both within the subregion

and with outside partners, in combating the illicit trafficking in arms and explosives.

The United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific²⁸ organized, in August 2002, the Fifth United Nations Conference on Disarmament issues, entitled “The challenge of terrorism for international security and disarmament: global and regional impact”. The conference addressed several issues, including the impact of the 11 September 2001 terrorist attacks on the field of security and disarmament, the relationship between terrorism and weapons of mass destruction, Asia-Pacific regional cooperation in combating terrorism and responses to terrorism by the United Nations and regional organizations.

Europe

Security and disarmament issues continued to be addressed within the regional institutional framework: the Organization for Security and Cooperation in Europe (OSCE),²⁹ the European Union (EU), the North Atlantic Treaty Organization (NATO), and other regional and subregional organizations. The security situation in the Balkans, especially in Kosovo and the former Yugoslav Republic of Macedonia, remained high on their agenda.

OSCE continued activities to combat terrorism and to promote conflict prevention and confidence-building, gradually expanding its activities in the security field through monitoring the implementation of the Dayton Agreement³⁰ and addressing issues relating to small arms. In July 2002, the EU Council approved EU priorities in the field of disarmament, including non-proliferation of weapons of mass destruction and their means of delivery; strengthening the Non-Proliferation Treaty and its review process; further strengthening of the regimes established by the Chemical Weapons Convention and the Biological Weapons Convention; early entry into force of the Comprehensive Nuclear-Test-Ban Treaty of 1996;³¹ supporting efforts to draft an International Code of Conduct against Ballistic Missile Proliferation; pursuing a successful outcome of the Fourth Meeting of the States Parties to the Mine-Ban Convention and providing assistance in mine action; and, in the framework of the Conference on Disarmament, supporting the launch of negotiations of a Fissile Material Cut-off Treaty, as well as dealing with both nuclear disarmament and the prevention of an arms race in outer space. NATO carried out its activities mainly through the Euro-Atlantic Partnership Council, Partnership for Peace and the NATO-Russia Permanent Joint Council. The year 2002 marked the opening of a new chapter in NATO-Russian relations with the new Council, which replaced the previous Permanent Joint Council and was to provide a mechanism for consultation, consensus-building, cooperation and joint decisions. NATO continued to address issues related to its enlargement and intensified its consultations with Partners, culminating at the Summit meeting of Heads of State and Government held in November 2002, at which seven States were invited to join the Al-

liance.³² Furthermore, NATO forces continued to be present in a number of peacekeeping missions, such as NATO-led peacekeeping operations in Bosnia and Herzegovina and in Kosovo, part of United Nations efforts to stabilize the region.

The Security Council continued to deal with disarmament-related issues in Bosnia and Herzegovina and in Kosovo. While reaffirming its commitment to the implementation of the Dayton Agreement and the relevant decisions of the Peace Implementation Council, established on the basis of that Agreement, the Council decided to conclude the United Nations Mission in Bosnia and Herzegovina (UNMIBH), including the international police task force, on 31 December 2002 (Council resolution 1423 (2002)). The Council reaffirmed its continued commitment to the full and effective implementation of its resolution 1244 (1999), under which a civil presence, the United Nations Interim Administration Mission in Kosovo (UNMIK), and a security presence were established in Kosovo.

Consideration by the General Assembly

During the fifty-seventh session, the General Assembly, upon the recommendation of the First Committee, took action on 13 draft resolutions dealing with regional disarmament issues, including resolution 57/55, entitled “Establishment of a nuclear-weapon-free zone in the region of the Middle East”, which had been introduced in the Committee by Egypt. In explaining its position after the draft resolution was adopted without a vote, Israel reiterated its position that, while it continued to support the creation of a mutually verifiable nuclear-weapon-free zone in the region, it believed that the political realities in the Middle East precluded that goal. The Assembly also adopted resolution 57/67 on Mongolia’s international security and nuclear-weapon-free status and resolution 57/69 on the establishment of a nuclear-weapon-free zone in Central Asia. Resolution 57/73, entitled “Nuclear-weapon-free southern hemisphere and adjacent areas”, had been introduced in the Committee by Brazil. The United States, speaking also on behalf of the United Kingdom and France, explained their negative vote, pointing out that the draft sought to create a new zone, the geographical scope of which would include waters under international jurisdiction. They held that such a measure would be contrary to existing international law and would, therefore, be unacceptable to those States that were committed to respect the United Nations Convention on the Law of the Sea of 1982.³³

The Assembly also adopted resolution 57/77, entitled “Conventional arms control at the regional and subregional levels”, which had been introduced in the Committee by Pakistan, on behalf of the sponsors. Speaking after the vote in the Committee, India gave several reasons for its negative vote, including the fact that its security concerns were not confined to what had been referred to in the draft as “South Asia”.

(e) Other issues

Terrorism and disarmament

During 2002, the Counter-Terrorism Committee (CTC) reported to the Security Council at regular intervals. The Council invited CTC to focus on ensuring that all States had legislation in place covering all aspects of its resolution 1373 (2001), and on building a dialogue with international, regional and subregional organizations active in the areas covered by that resolution. The Ad Hoc Committee on Terrorism of the General Assembly continued to press ahead with its work on the development of a draft comprehensive anti-terrorism convention aimed at filling the gaps left by the existing 12 sectoral treaties, but was unable to conclude negotiations on the convention.³⁴ The Assembly, upon the recommendation of the First Committee, also adopted resolution 57/83, entitled “Measures to prevent terrorists from acquiring weapons of mass destruction”.

The Secretary-General had established the Policy Working Group (PWG) in 2001 with a mandate to identify the long-term implications and broad policy dimensions of the issue of terrorism for the United Nations and to formulate recommendations on steps that the United Nations system might take in that regard. In June 2002, PWG submitted its report,³⁵ wherein it recommended that the United Nations should be part of a threefold strategy supporting global efforts to: (a) dissuade disaffected groups from embracing terrorism; (b) deny groups or individuals the means to carry out acts of terrorism; and (c) sustain broad-based international cooperation in the struggle against terrorism.

Disarmament and human security

In November 2002, the United Nations Department for Disarmament Affairs, the United Nations Institute for Disarmament Research (UNIDIR) and the Centre for Humanitarian Dialogue co-sponsored a seminar in Geneva, entitled “Disarmament, Health and Humanitarian Action: Putting People First”, where experts and practitioners from both the traditional disarmament community and the humanitarian and public health communities were brought together to discuss the people-centred approach to disarmament.

During the year, the General Assembly, upon the recommendation of the First Committee, adopted resolutions in this area, including resolution 57/53, entitled “Developments in the field of information and telecommunications in the context of international security”, which had been introduced in the Committee by the Russian Federation, on behalf of the sponsors, and resolution 57/54, entitled “Role of science and technology in the context of international security and disarmament”, which had been introduced by India, on behalf of the sponsors. Speaking after the vote in the Committee on the latter, the Republic of Korea explained its negative vote,

stating that it believed that the draft lacked balance by failing to acknowledge the contribution of current export control regimes to deterring the proliferation of not only equipment and technologies related to weapons of mass destruction but also dual-use goods and technologies with wide military applications.

Relationship between disarmament and development

The United Nations Department for Disarmament Affairs organized a panel discussion, entitled “Disarmament and Development: New Choices for Security and Prosperity”, in April 2002, at United Nations Headquarters. The discussion focused on reducing military expenditures through regional approaches, transparent government reporting and defence conversion.

The General Assembly, upon the recommendation of the First Committee, adopted resolution 57/65, entitled “Relationship between disarmament and development”, which had been introduced in the Committee by South Africa, on behalf of the States Members of the United Nations that were members of the Movement of Non-Aligned Countries. Prior to the vote in the Committee, France cited three reasons for its abstention: (a) the symbiotic relationship between disarmament and development did not take into account the concept of security, without which neither issue could be understood; (b) the automatic link between commitments to economic and social development and savings from disarmament was questionable; and (c) the mandate for a governmental expert group to reappraise the relationship between development and disarmament, including the future role of the United Nations, needed clarification and evaluation by Member States. Speaking after the vote, the United Kingdom explained that it had also abstained because it questioned several new elements in the draft, particularly the reason, outcome and value of the mandate for the expert group. The United States attributed its negative vote to the new language in the draft which called for a reappraisal of the relationship between disarmament and development. It maintained its well-known position that disarmament and development were distinct issues that could not be linked. Belgium, speaking on behalf of several European countries, recognized that while considerable benefits might accrue from disarmament, there was not an automatic link between those savings and commitments to economic and social development.

Depleted uranium

As a follow-up to its work in 1999-2002, the United Nations Environment Programme’s expert teams carried out further investigations in Serbia and Montenegro and in Bosnia and Herzegovina. The new studies confirmed the presence of widespread, but low-level, depleted uranium contamination in both countries. Although the experts did not find that the levels of radioactivity could pose a direct threat to the environment or human health, they strongly recommended taking precautionary decon-

tamination measures of the targeted buildings, as well as recommending the monitoring of groundwater quality.

During the year, the First Committee rejected a draft resolution,³⁶ entitled “Effects of the use of depleted uranium in armaments”, which had been introduced by Iraq. Before the vote on the draft, the United States and Denmark, on behalf of the European Union and other countries associating themselves with its statement, said that they would vote against the draft because comprehensive studies on the effects of the use of depleted uranium in armaments and its effects on health and the environment had already been conducted by WHO and UNEP. Moreover, they could not subscribe to the implication in the draft that depleted uranium was a new type of weapon of mass destruction.

Multilateralism and disarmament

At the fifty-seventh session, the General Assembly, upon the recommendation of the First Committee, adopted resolution 57/63, entitled “Promotion of multilateralism in the area of disarmament and non-proliferation”, which had been introduced by South Africa, on behalf of the States Members of the United Nations that were members of the Movement of Non-Aligned Countries. Before the vote in the Committee, the United States stated that it would vote against the draft resolution because its language was unbalanced and its general tenor was more apt to create divisions rather than garner support for the principle of multilateralism. Denmark, speaking on behalf of the European Union and other countries associating themselves with the statement, and New Zealand said that they could not support the draft. They shared the commitment and view of the United States and felt that the text was not constructive and was confrontational because it did not acknowledge the effective and complementary role of unilateral, bilateral and plurilateral approaches to disarmament and non-proliferation. Cuba stated that it would vote for the draft, because it believed that the text supported the United Nations in its capacity as the appropriate multilateral framework to deal with current threats to international peace and security.

Arms limitation and disarmament agreements

At the fifty-seventh session, the General Assembly, upon the recommendation of the First Committee, adopted resolution 57/64, entitled “Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control”, which had been introduced by South Africa, on behalf of the States Members of the United Nations that were members of the Movement of Non-Aligned Countries, and resolution 57/86, entitled “Compliance with arms limitation and disarmament and non-proliferation agreements”, which had been introduced by the United States, on behalf of the sponsors. Concerning the latter, Cuba regretted that the draft omitted important elements contained in the 1997

resolution on the same subject, resolution 52/30, e.g. absence of references to existing arms limitation and disarmament and non-proliferation agreements; the conclusion of additional disarmament agreements; and requests for the Secretary-General to provide continued assistance to restore and protect the integrity of disarmament agreements. New Zealand, Brazil and Egypt shared Cuba's concerns, emphasizing that verification remained a vital and indispensable tool, and the new language in the resolution failed to reflect its role in enhancing confidence and assessing compliance with arms limitation and disarmament agreements. Egypt, citing the Vienna Convention on the Law of Treaties of 1969,³⁷ stressed that any draft resolution adopted by the First Committee could never supersede the commitments of Member States that were full parties to international agreements.

2. OTHER POLITICAL AND SECURITY QUESTIONS

(a) Membership in the United Nations

During 2002, Timor-Leste (formerly known as East Timor) joined the United Nations as a Member State. The number of Member States thereby stood at 191.

(b) Legal aspects of peaceful uses of outer space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-first session at the United Nations Office at Vienna from 2 to 12 April 2002.³⁸ During the session, there was a general exchange of views, and the Subcommittee noted the current status of the five United Nations treaties on outer space.³⁹ Various international organizations reported to the Subcommittee on their activities relating to space law, including ICAO, ITU, UNESCO, WIPO and the International Law Association.

Regarding agenda item 6, entitled "Matters relating to: (a) the definition and delimitation of outer space; and (b) 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 Working Group on the topic had before it a number of documents, including a report of the United Nations Secretariat, entitled "Historical summary on the consideration of the question on the definition and delimitation of outer space",⁴⁰ and a conference room paper submitted by the Russian Federation, entitled "Some differences between legal regimes of air space and outer

space”.⁴¹ At the session, the Working Group reviewed the questionnaire on aerospace objects and amended it, and agreed that it should be circulated in its amended form to all States Members of the United Nations.

Also during the session the Legal Subcommittee had before it the text of the Convention on International Interests in Mobile Equipment, which had been signed at Cape Town, South Africa, on 16 November 2001,⁴² as well as the preliminary draft protocol on matters specific to space assets of the Convention.⁴³ The Subcommittee welcomed the intention of UNIDROIT to open its intergovernmental meetings on the space protocol to all member States and interested observers of the Committee on the Peaceful Uses of Outer Space, as well as to representatives of the Office for Outer Space Affairs. It also was noted that the Subcommittee should consider whether or not to retain the subject of the preliminary draft protocol on its agenda beyond 2002.

In connection with item 9, entitled “Review of the concept of the ‘launching State’”, the Legal Subcommittee established a Working Group, which had before it a report by the United Nations Secretariat,⁴⁴ which synthesized information presented during the first two years of the workplan, 2000 and 2001. The Working Group also had before it a proposal by the Chairman for conclusions of the Working Group⁴⁵ and, following consideration of the proposal, the Working Group adopted its conclusions of the three-year workplan.⁴⁶

The Committee on the Peaceful Uses of Outer Space, at its forty-fifth session, held at Vienna from 5 to 14 June 2002, took note of the Legal Subcommittee’s report, and a number of views were expressed concerning the work of the Subcommittee. Furthermore, the Committee welcomed the announcement that the first United Nations Workshop on Capacity-Building in Space Law would be organized by the Secretariat in cooperation with the International Institute of Air and Space Law of the University of Leiden and the Government of the Netherlands at The Hague from 18 to 21 November 2002.

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted, without a vote, resolution 57/116, entitled “International cooperation in the peaceful uses of outer space”, in which it endorsed the report of the Committee on the Peaceful Uses of Outer Space. In the same resolution, the Assembly also noted that the Legal Subcommittee, at its forty-second session, would submit its proposals to the Committee for new items to be considered by the Subcommittee at its forty-third session, in 2004. Furthermore, the Assembly noted that the group of experts designated by interested Member States to identify which aspects of the report on ethics of space policy of the World Commission on the Ethics of Scientific Knowledge and Technology of UNESCO might need to be studied by the

Committee and to draft a report, in consultation with other international organizations and in close liaison with the World Commission, would submit its report to the Legal Subcommittee at its forty-second session.

(c) United Nations peacekeepers

The General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted, without a vote, resolution 57/129, entitled “International Day of United Nations Peacekeepers”, in which it decided to designate 29 May as the International Day of United Nations Peacekeepers, to be observed annually to pay tribute to all the men and women who had served and continued to serve in United Nations peacekeeping operations for their high level of professionalism, dedication and courage, and to honour the memory of those who had lost their lives in the cause of peace. The Assembly also adopted at its fifty-seventh session resolution 57/336, “Comprehensive review of the whole question of peacekeeping operations in all their aspects”, in which it welcomed the report of the Special Committee on Peacekeeping Operations.⁴⁷

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

(a) Seventh special session of the Governing Council
of the United Nations Environment Programme⁴⁸

The seventh special session of the Governing Council of UNEP was held in Cartagena, Colombia, from 13 to 15 February 2002. At the session, the Governing Council adopted a number of decisions, including decision SS.VII/1, “International environmental governance”, in which it adopted the report of the Open-ended Intergovernmental Group of Ministers or Their Representatives on International Environmental Governance, which was attached to the decision as an appendix; decision SS.VII/3, “Strategic approach to international chemicals management”, in which it decided that there was a need to develop further a strategic approach to international chemicals management and endorsed the Intergovernmental Forum on Chemical Safety Bahia Declaration and Priorities for Action beyond 2000 as the foundation of that approach; and decision SS.VII/4, “Compliance with and enforcement of multilateral environmental agreements”, in which it adopted the guidelines on compliance with and enforcement of multilateral environmental agreements.

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, on the recommendation of the Second Committee, adopted a number of resolutions and decisions. Among them was resolution 57/257 on protection of global climate for present and future generations of mankind, adopted without a vote, in which the Assembly called upon States to work cooperatively towards achieving the ultimate objective of the United Nations Framework Convention on Climate Change of 1992⁴⁹ and noted the States that had ratified the Kyoto Protocol to the Convention of 1997.⁵⁰ Also adopted, without a vote, were resolution 57/259 on the implementation of the 1994 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa,⁵¹ in which the Assembly took note of the report of the Secretary-General,⁵² and resolution 57/260 on the 1992 Convention on Biological Diversity,⁵³ in which the Assembly took note of the report of the Executive Secretary of the Convention, submitted by the Secretary-General to the General Assembly.⁵⁴ Regarding the latter resolution, the Assembly noted the outcome of the sixth meeting of the Conference of the Parties to the Convention, hosted by the Government of the Netherlands in April 2002, and also noted the outcome of the third meeting of the Intergovernmental Committee for the Cartagena Protocol on Biosafety of 2000,⁵⁵ held at The Hague in April 2002.

(b) Economic issues

On the recommendation of the Second Committee, the General Assembly adopted a number of resolutions and decisions on economic issues during 2002, including the following resolutions, adopted without a vote: resolution 57/246, “Implementation of 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”; resolution 57/247, “Integration of the economies in transition into the world economy”; resolution 57/263, “Economic and technical cooperation among developing countries”; resolution 57/272, “High-level international intergovernmental consideration of financing for development”, in which the Assembly underscored its firm commitment to the full and effective implementation of the Monterrey Consensus of the International Conference on Financing for Development⁵⁶ and, in that regard, to promoting a holistic approach to the interconnected national, international and systemic challenges of financing for development, in active partnership with the Bretton Woods institutions, the World Trade Organization and other relevant institutional stakeholders, civil society and the private sector, including through collective and coherent action in every area of the Consensus; and resolution 57/253 on the World Summit on Sustainable Development, in which the Assembly took note of the report of the World Summit,⁵⁷ endorsed the Johannesburg Declaration on Sustain-

able Development⁵⁸ and the Johannesburg Plan of Implementation,⁵⁹ and decided to adopt sustainable development as a key element of the overarching framework for United Nations activities, in particular for achieving the internationally agreed development goals, including those contained in the United Nations Millennium Declaration,⁶⁰ and to give overall political direction to the implementation of Agenda 21⁶¹ and its review.

(c) Crime prevention

At its fifty-seventh session, the General Assembly, on the recommendation of the Second Committee, adopted, without a vote, resolution 57/244, “Preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin”, in which it took note of the report of the Secretary-General⁶² and noted the ongoing work of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, whose terms of reference had been adopted by the General Assembly in its resolution 56/260 of 31 January 2002, and urged an early completion of those negotiations to allow for the adoption of the Convention by the General Assembly at its fifty-eighth session and the celebration of the high-level political conference, to be held in Mexico by the end of 2003, for the purpose of signing the Convention.

On the recommendation of the Third Committee, the General Assembly adopted, without a vote, a number of resolutions and decisions, including resolution 57/168, “International cooperation in the fight against transnational organized crime: assistance to States in capacity-building with a view to facilitating the implementation of the United Nations Convention against Transnational Organized Crime and the protocols thereto”,⁶³ in which the Assembly took note of the report of the Secretary-General on prompting the ratification of the United Nations Convention and the protocols thereto;⁶⁴ resolution 57/170, “Follow-up to the plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century”; resolution 57/171, “Preparations for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice”, in which the Assembly took note of the report of the Commission on Crime Prevention and Criminal Justice on its eleventh session⁶⁵ and of its discussion on the preparations for the Eleventh Congress,⁶⁶ and decided that the main theme of the Eleventh Congress would be “Synergies and responses: strategic alliances in crime prevention and criminal justice”; resolution 57/172, “United Nations African Institute for the Prevention of Crime and the Treatment of Offenders”; resolution 57/173, “Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”, in which the Assembly took note of the report of the Secretary-General on the progress made;⁶⁷ and decision 57/528, in which the Assembly took note of the report of the Secretary-General on the preparations for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice.⁶⁸

Also adopted on the recommendation of the Third Committee, without a vote, was resolution 57/176, “Trafficking in women and girls”, in which the Assembly took note of the report of the Secretary-General,⁶⁹ urged Governments to take appropriate measures to address the root factors, including external factors that encouraged trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour, in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing perpetrators, through both criminal and civil measures; further urged Governments to consider signing and ratifying relevant United Nations legal instruments such as the 2000 United Nations Convention against Transnational Organized Crime and the protocols thereto, in particular the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000, the Convention on the Elimination of All Forms of Discrimination against Women of 1979⁷⁰ and the Convention on the Rights of the Child of 1989,⁷¹ the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 1999⁷² and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2000,⁷³ as well as the Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (Convention No. 111) and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182) of the International Labour Organization; and called upon all Governments to criminalize trafficking in women and children, while ensuring that the victims of those practices were not penalized for being trafficked. The Assembly also adopted, without a vote, resolution 57/179, entitled “Working towards the elimination of crimes against women committed in the name of honour”, in which the Assembly welcomed the activities and initiatives of States aimed at the elimination of crimes against women committed in the name of honour, including the adoption of amendments to relevant national laws relating to such crimes, the effective implementation of such laws and educational, social and other measures, including national information and awareness-raising campaigns, as well as activities and initiatives of States aimed at the elimination of all other forms of violence against women. In this same area, the Assembly further adopted, without a vote, resolution 57/181, “Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled ‘Women 2000: gender equality, development and peace for the twenty-first century’”, in which the Assembly took note of the report of the Secretary-General.⁷⁴

(d) World drug problem

At its fifty-seventh session, the General Assembly adopted, without a vote, on the recommendation of the Third Committee, resolution 57/174,

“International cooperation against the world drug problem”, in which it reaffirmed that countering the world drug problem was a common and shared responsibility that must be addressed in a multilateral setting, required an integrated and balanced approach, and must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and international law; urged competent authorities, at the international, regional and national levels, to implement the outcome of the twentieth special session of the General Assembly, within the agreed time frames, in particular the high-priority practical measures at the international, regional or national level, as indicated in the Political Declaration;⁷⁵ and also urged Member States to implement the Action Plan⁷⁶ for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction⁷⁷ and to strengthen their national efforts to counter the abuse of illicit drugs among their population, in particular among children and young people.

In the same resolution, the General Assembly emphasized the role of the Commission on Narcotic Drugs as the principal United Nations policy-making body on drug control issues and as the governing body of the United Nations International Drug Control Programme; reaffirmed the role of the Executive Director of the United Nations International Drug Control Programme in coordinating and providing effective leadership for all United Nations drug control activities; and welcomed the efforts of the United Nations Drug Control Programme to implement its mandate within the framework of the international drug control treaties,⁷⁸ the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control,⁷⁹ the Global Programme of Action⁸⁰ and the outcome of the special session of the General Assembly devoted to countering the world drug problem.

(e) Human rights issues

(1) *Status and implementation of international instruments*

In 2002, one more State became party to the International Covenant on Economic, Social and Cultural Rights,⁸¹ bringing the total number of States parties to 146; two more States became party to the International Covenant on Civil and Political Rights of 1966,⁸² bringing the total number of States parties to 149; three more States became party to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966,⁸³ bringing the total number of States parties to 104; and three more States became party to the Second Optional Protocol to the International Covenant on Civil and Political Rights of 1989, aiming at the abolition of the death penalty,⁸⁴ bringing the total number of States parties to 49.

*International Convention on the Elimination of All Forms of Racial Discrimination of 1966*⁸⁵

During 2002, three more States became party to the Convention, bringing the total number of States parties to 165. Four more States became

party to the 1992 amendment to article 8 of the Convention,⁸⁶ bringing the total number of States parties to 36.

At its fifty-seventh session, the General Assembly, on the recommendation of the Third Committee, adopted, without a vote, resolution 57/194 on the International Convention on the Elimination of All Forms of Racial Discrimination, in which the Assembly took note of the reports of the Committee on the Elimination of Racial Discrimination on its fifty-eighth and fifty-ninth sessions⁸⁷ and its sixtieth and sixty-first sessions;⁸⁸ and took note of the report of the Secretary-General on the status of the International Convention.⁸⁹ The Assembly also adopted, by a recorded vote of 173 to 3, with 2 abstentions, resolution 57/195, entitled “The fight against racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action”,⁹⁰ in which the Assembly affirmed that racism and racial discrimination, and xenophobia and related intolerance, where they amounted to racism and racial discrimination, constituted serious violations of and obstacles to the full enjoyment of all human rights; noted with great concern that, despite the many efforts of the international community, the objectives of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination had largely not been achieved; welcomed, therefore, the adoption of the Durban Declaration and Programme of Action and called for its full implementation at the national, regional and international levels; and took note of the report of the former Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.⁹¹

Convention on the Elimination of All Forms of Discrimination against Women of 1979

During 2002, two more States became party to the Convention, bringing the total number of States parties to 170. Eleven more States became party to the amendment to article 20, paragraph 1, of the Convention,⁹² bringing the total number of States parties to 37, and two more States became party to the 1999 Optional Protocol to the Convention, bringing the total number of States parties to 49.

At its fifty-seventh session, the General Assembly adopted, on the recommendation of the Third Committee, without a vote, resolution 57/178 on the Convention on the Elimination of All Forms of Discrimination against Women, in which the Assembly welcomed the report of the Secretary-General on the status of the Convention.⁹³

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984⁹⁴

In 2002, five more States became party to the Convention, bringing the total number of States parties to 132. Two more States became party to

the amendments to article 17, paragraph 7, and article 18, paragraph 5, of the Convention,⁹⁵ bringing the total number of States parties to 25.

At its fifty-seventh session, the General Assembly, on the recommendation of the Third Committee, adopted, by a recorded vote of 127 to 4, with 42 abstentions, resolution 57/199, “Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, in which the Assembly adopted the Optional Protocol and requested the Secretary-General to open it for signature, ratification and accession at United Nations Headquarters in New York from 1 January 2003.⁹⁶

The General Assembly also adopted, without a vote, resolution 57/200, “Torture and other cruel, inhuman or degrading treatment or punishment”, in which it condemned all forms of torture, including through intimidation, as described in article 1 of the Convention, and took note of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annexed to its resolution 55/89, as a useful tool in efforts to combat torture.

Convention on the Rights of the Child of 1989

During 2002, the number of States parties remained at 191. Sixteen States became party to the 1995 amendment to article 43, paragraph 2, of the Convention,⁹⁷ bringing the total number of States parties to 129. Eighteen States became party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, bringing the total number of States parties to 45, and 29 States became party to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, bringing the total number of States parties to 44.

During 2002, the General Assembly adopted, on the recommendation of the Third Committee, a number of resolutions and decisions, including resolution 57/189, “The girl child”, adopted without a vote, in which the Assembly urged all States to take necessary measures and to institute legal reforms to ensure the full and equal enjoyment by the girl child of all human rights and fundamental freedoms, and to take effective action against violations of those rights and freedoms and to base programmes and policies for the girl child on the rights of the child; urged States to enact and strictly enforce laws to ensure that marriage was entered into only with the free and full consent of the intending spouses, to enact and strictly enforce minimum age for marriage and to raise the minimum age for marriage where necessary; and also urged States to enact and enforce legislation to protect girls from all forms of violence and exploitation, including female infanticide and prenatal sex selection, female genital mutilation, rape, domestic violence, incest, sexual abuse, sexual exploitation, child prostitution and child pornography, trafficking and forced labour, and to develop age-

appropriate safe and confidential programmes and medical, social and psychological support services to assist girls who were subjected to violence. The Assembly also adopted resolution 57/190, “Rights of the child”, by a recorded vote of 175 to 2, with no abstentions. The Assembly also adopted decision 57/530, in which it took note of the report of the Committee on the Rights of the Child⁹⁸ and the report of the Secretary-General on the status of the Convention on the Rights of the Child,⁹⁹ as well as decision 57/537, “Follow-up to the outcome of the special session on children”.

*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*¹⁰⁰

During 2002, one State became party to the Convention, bringing the total number of States parties to 19.

At its fifty-seventh session, the General Assembly, on the recommendation of the Third Committee, adopted, without a vote, resolution 57/201 on the Convention, in which the Assembly requested the Secretary-General to make all necessary provisions for the timely establishment of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families referred to in article 72 of the Convention, as soon as the Convention entered into force, and called upon States parties to submit their first periodic reports in due time.

(2) *Other human rights issues*

The General Assembly, on the recommendation of the Third Committee, adopted a number of other resolutions and decisions in the area of human rights at its fifty-seventh session, including resolution 57/202, entitled “Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights”, adopted without a vote, in which the Assembly took note of the report of the Secretary-General¹⁰¹ and the reports of the persons chairing the human rights treaty bodies on their thirteenth and fourteenth meetings,¹⁰² held at Geneva, from 18 to 22 June 2001 and from 24 to 26 June 2002, respectively, and also took note of the conclusions and recommendations contained in the reports. In its resolution 57/214 on extrajudicial, summary or arbitrary executions, which it adopted by a recorded vote of 130 to none, with 49 abstentions, the General Assembly took note of the interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions to the General Assembly¹⁰³ and the recommendations contained therein. The Assembly also adopted resolution 57/222, entitled “Human rights and unilateral coercive measures”, by a recorded vote of 122 to 55, with 1 abstention, in which the Assembly, taking note of the report submitted by the Secretary-General,¹⁰⁴ and the reports of the Secretary-General on the implementation of resolutions 52/120¹⁰⁵ and 55/110,¹⁰⁶ urged

States to refrain from adopting or implementing any unilateral measures not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with all their extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights¹⁰⁷ and other international human rights instruments, in particular the right of individuals and peoples to development.

(f) Refugee issues

Status of international instruments

During 2002, three more States became party to the Convention Relating to the Status of Refugees of 1951,¹⁰⁸ bringing the total number of States parties to 141; two more States became party to the Protocol Relating to the Status of Refugees of 1967,¹⁰⁹ bringing the total number of States parties to 139; the number of States parties to the Convention Relating to the Status of Stateless Persons of 1954¹¹⁰ remained at 54; and the number of States parties to the Convention on the Reduction of Statelessness of 1961¹¹¹ remained at 26.

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, on the recommendation of the Third Committee, adopted, without a vote, resolution 57/183, entitled “Assistance to refugees, returnees and displaced persons in Africa”, in which the Assembly took note of the reports of the Secretary-General¹¹² and the United Nations High Commissioner for Refugees.¹¹³ The Assembly further adopted, without a vote, resolutions 57/185, entitled “Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees”, and 57/186, entitled “Continuation of the Office of the United Nations High Commissioner for Refugees”. In resolution 57/187, adopted without a vote, the Assembly endorsed the report of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees on the work of its fifty-third session.¹¹⁴

(g) Ad hoc Tribunals for the Former Yugoslavia and for Rwanda

On 16 October 2002, the General Assembly, without reference to a Main Committee, adopted decisions 57/508 and 57/509, by which it took note, respectively, of the ninth 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 1991¹¹⁵ and the seventh 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 1994.¹¹⁶ With its adoption of decision 57/414, on 31 January 2003, the General Assembly elected 11 judges to serve in the Trial Chambers of the International Criminal Tribunal for Rwanda for a term of office of four years, that is, until 24 May 2007.¹¹⁷

(h) Cultural issues

At the fifty-seventh session, the General Assembly adopted, without reference to a Main Committee, resolution 57/158, entitled “United Nations Year for Cultural Heritage, 2002”, in which it declared the United Nations Year for Cultural Heritage concluded and reaffirmed the importance of further developing international mechanisms for safeguarding and protecting the world cultural heritage, and encouraged UNESCO to explore possible ways to intensify international cooperation in this regard, *inter alia*, by considering convening an international conference on strengthening and consolidating international mechanisms for safeguarding and protecting the world cultural heritage.

4. LAW OF THE SEA

Status of international instruments

In 2002, four more States become party to the United Nations Convention on the Law of the Sea of 1982,¹¹⁸ bringing the total number of States parties to 141. Eight more States become party to the Agreement relating to the implementation of Part XI of the Convention of 1994,¹¹⁹ bringing the total number of States parties to 111. One more State became party to the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks of 1995,¹²⁰ bringing the total number of States parties to 32. Two additional States became party to the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea of 1997,¹²¹ bringing the total number of States parties to 12, and three further States became parties to the Protocol on the Privileges and Immunities of the International Seabed Authority of 1998,¹²² bringing the total number of States parties to nine.

Report of the Secretary-General¹²³

The extensive report covered many aspects of the oceans and the law of the sea during 2002, including maritime space, shipping and navigation, crimes at sea, sustainable development of marine resources and underwater

cultural heritage, marine environment, marine science and technology and settlement of disputes. In the area of “crimes at sea”, the report disclosed that in the 20 years since the adoption of the United Nations Convention on the Law of the Sea in 1982, crimes at sea had become more prevalent and were increasing, and that the framers of the Convention never envisaged many of the crimes which existed today. As a result, since 1982, a number of conventions had been adopted which were aimed at suppressing and combating specific criminal activities, including those which took place at sea. At the same time, it was pointed out that if flag States complied with the obligations set out in the 1982 Convention and exercised their jurisdiction and control over ships flying their flag and ensured that they complied with relevant international rules and regulations, it would greatly aid in the prevention of their illegal use for criminal activities. Furthermore, the report discussed the fact that maritime security had been placed high on the agenda of the international community following the terrorist attacks in the United States on 11 September 2001. Attention had focused on the adequacy of measures to prevent acts of terrorism, which threatened the security of passengers and crews and the safety of ships.

In the section of the report on “Settlement of disputes”, it was reported that the International Tribunal for the Law of the Sea had been seized of the *Mox Plant case (Ireland v. United Kingdom)*, a dispute that stemmed from the authorization by the United Kingdom for the opening of a new “Mox” plant in Sellafield, United Kingdom. The plant was designed to reprocess spent nuclear fuel containing a mixture of plutonium dioxide and uranium dioxide into a new fuel, which was known as mixed oxide fuel, or “Mox”. The Government of Ireland was concerned that the operation of the plant would contribute to the pollution of the Irish Sea and underlined the potential risks involved in the transportation of radioactive material to and from the plant. Further details on cases before the International Tribunal can be found on the website www.itlos.org.

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, without reference to a Main Committee, adopted, by a recorded vote of 132 to 1, with 2 abstentions, resolution 57/141, entitled “Oceans and the law of the sea”, in which the Assembly noted with satisfaction 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 1982 Convention, underlined its important role and authority concerning the interpretation or application of the Convention and the 1994 Agreement relating to the implementation of Part XI of the Convention, 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 parties to note the provisions of annexes V, VI, VII and VIII to the Convention concerning,

respectively, conciliation, the Tribunal, arbitration and special arbitration. Also adopted, without a vote, was resolution 57/142, entitled “Large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas/illegal, unreported and unregulated fishing, fisheries by-catch and discards, and other developments”, in which the General Assembly encouraged States to apply by 2010 the ecosystem approach, noted the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem¹²⁴ and decisions V/6¹²⁵ and VI/12¹²⁶ of the Conference of the Parties to the Convention on Biological Diversity of 1992, supported continuing work under way in the Food and Agriculture Organization of the United Nations to develop guidelines for the implementation of ecosystem considerations in fisheries management, and noted the importance of relevant provisions of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and the FAO Code of Conduct for Responsible Fisheries, both of 1995,¹²⁷ to this approach. The General Assembly further adopted, without a vote, resolution 57/143, entitled “Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks”, in which it expressed its deep satisfaction at the entry into force of the Agreement.

5. INTERNATIONAL COURT OF JUSTICE

CONTENTIOUS CASES BEFORE THE COURT¹²⁸

(a) Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)

Pursuant to the Court’s Order of 21 October 1999, permitting Equatorial Guinea to intervene in the case, that State presented its observations to the Court during the course of public hearings held from 18 February to 21 March 2002.

On October 2002, the Court delivered its judgment on the merits of the case.

Final paragraph (para. 325)

“For these reasons,

THE COURT,

I. (A) By fourteen votes to two,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is delimited by the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buer-genthal, Elaraby; *Judge ad hoc* Mbaye;

AGAINST: *Judge* Koroma; *Judge ad hoc* Ajibola;

(B) By fourteen votes to two,

Decides that the line of the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is as follows:

From a tripoint in Lake Chad lying at 14° 04' 59"9999 longitude east and 13° 05' latitude north, in a straight line to the mouth of the River Ebeji, lying at 14° 12' 12" longitude east and 12° 32' 17" latitude north; and from there in a straight line to the point where the River Ebeji bifurcates, located at 14° 12' 03" longitude east and 12° 30' 14" latitude north;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buer-genthal, Elaraby; *Judge ad hoc* Mbaye;

AGAINST: *Judge* Koroma; *Judge ad hoc* Ajibola;

II. (A) By fifteen votes to one,

Decides that the land boundary between the Republic of Cameroon and the Federal Republic of Nigeria is delimited, from Lake Chad to the Bakassi Peninsula, by the following instruments:

- (i) From the point where the River Ebeji bifurcates as far as Tamnyar Peak, by paragraphs 2 to 60 of the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;
- (ii) From Tamnyar Peak to pillar 64 referred to in article XII of the Anglo-German Agreement of 12 April 1913, by the British Order in Council of 2 August 1946;
- (iii) From pillar 64 to the Bakassi Peninsula, by the Anglo-German Agreements of 11 March and 12 April 1913;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buer-genthal, Elaraby; *Judges ad hoc* Mbaye, Ajibola;

AGAINST: *Judge* Koroma;

(B) Unanimously,

Decides that the aforesaid instruments are to be interpreted in the manner set out in paragraphs 91, 96, 102, 114, 119, 124, 129, 134, 139, 146, 152, 155, 160, 168, 179, 184 and 189 of the present Judgment;

III. (A) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi is delimited by articles XVIII to XX of the Anglo-German Agreement of 11 March 1913;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; *Judge ad hoc* Mbaye;

AGAINST: *Judges* Koroma, Rezek; *Judge ad hoc* Ajibola;

(B) By thirteen votes to three,

Decides that sovereignty over the Bakassi Peninsula lies with the Republic of Cameroon;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; *Judge ad hoc* Mbaye;

AGAINST: *Judges* Koroma, Rezek; *Judge ad hoc* Ajibola;

(C) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi follows the thalweg of the Akpakorum (Akwayafe) River, dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as the straight line joining Bakassi Point and King Point;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; *Judge ad hoc* Mbaye;

AGAINST: *Judges* Koroma, Rezek; *Judge ad hoc* Ajibola;

IV. (A) By thirteen votes to three,

Finds, having addressed Nigeria's eighth preliminary objection, which it declared in its Judgment of 11 June 1998 not to have an exclusively preliminary character in the circumstances of the case, that it has jurisdiction over the claims submitted to it by the Republic of Cameroon regarding the delimitation of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria, and that those claims are admissible;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buerghenthal, Elaraby; *Judge ad hoc* Mbaye;

AGAINST: *Judges* Oda, Koroma; *Judge ad hoc* Ajibola;

(B) By thirteen votes to three,

Decides that, up to point G below, the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course:

(a) Starting from the point of intersection of the centre of the navigable channel of the Akwayafe River with the straight line joining Bakassi Point and King Point as referred to in point III (C) above, the boundary follows the 'compromise line' drawn jointly at Yaoundé on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 (Yaoundé II Declaration) and passing through 12 numbered points, whose co-ordinates are as follows:

	<i>Longitude</i>	<i>Latitude</i>
Point 1:	8° 30' 44" E,	4° 40' 28" N
Point 2:	8° 30' 00" E,	4° 40' 00" N
Point 3:	8° 28' 50" E,	4° 39' 00" N
Point 4:	8° 27' 52" E,	4° 38' 00" N
Point 5:	8° 27' 09" E,	4° 37' 00" N
Point 6:	8° 26' 36" E,	4° 36' 00" N
Point 7:	8° 26' 03" E,	4° 35' 00" N
Point 8:	8° 25' 42" E,	4° 34' 18" N
Point 9:	8° 25' 35" E,	4° 34' 00" N
Point 10:	8° 25' 08" E,	4° 33' 00" N
Point 11:	8° 24' 47" E,	4° 32' 00" N
Point 12:	8° 24' 38" E,	4° 31' 26" N;

(b) From point 12, the boundary follows the line adopted in the Declaration signed by the Heads of State of Cameroon and Nigeria at Maroua on 1 June 1975 (Maroua Declaration), as corrected by the exchange of letters between the said Heads of State of 12 June and 17 July 1975; that line passes through points A to G, whose co-ordinates are as follows:

	<i>Longitude</i>	<i>Latitude</i>
Point A:	8° 24' 24" E,	4° 31' 30" N
Point A1:	8° 24' 24" E,	4° 31' 20" N
Point B:	8° 24' 10" E,	4° 26' 32" N
Point C:	8° 23' 42" E,	4° 23' 28" N
Point D:	8° 22' 41" E,	4° 20' 00" N
Point E:	8° 22' 17" E,	4° 19' 32" N
Point F:	8° 22' 19" E,	4° 18' 46" N
Point G:	8° 22' 19" E,	4° 17' 00" N;

IN FAVOUR: *President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buerghenthal, Elaraby; Judge ad hoc Mbaye;*

AGAINST: *Judges Koroma, Rezek; Judge ad hoc Ajibola;*

(C) Unanimously,

Decides that, from point G, the boundary line between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 270° as far as the equidistance line passing through the midpoint of the line joining West Point and East Point; the boundary meets this equidistance line at a point X, with co-ordinates 8° 21' 20" longitude east and 4° 17' 00" latitude north;

(D) Unanimously,

Decides that, from point X, the boundary between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 187° 52' 27";

V. (A) By fourteen votes to two,

Decides that the Federal Republic of Nigeria is under an obligation expeditiously and without condition to withdraw its administration and its military and police forces from the territories which fall within the sovereignty of the Republic of Cameroon pursuant to points I and III of this operative paragraph;

IN FAVOUR: *President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buerghenthal, Elaraby; Judge ad hoc Mbaye;*

AGAINST: *Judge Koroma; Judge ad hoc Ajibola;*

(B) Unanimously,

Decides that the Republic of Cameroon is under an obligation expeditiously and without condition to withdraw any administration or military or police forces which may be present in the territories which fall within the sovereignty of the Federal Republic of Nigeria pursuant to point II of this operative paragraph. The Federal Republic of Nigeria has the same obligation in respect of the territories which fall within the sovereignty of the Republic of Cameroon pursuant to point II of this operative paragraph;

(C) By fifteen votes to one,

Takes note of the commitment undertaken by the Republic of Cameroon at the hearings that, 'faithful to its traditional policy of

hospitality and tolerance’, it ‘will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area’;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judges ad hoc* Mbaye, Ajibola;

AGAINST: *Judge* Parra-Aranguren;

(D) Unanimously,

Rejects all other submissions of the Republic of Cameroon regarding the State responsibility of the Federal Republic of Nigeria;

(E) Unanimously,

Rejects the counter-claims of the Federal Republic of Nigeria.”

Judge Oda appended a declaration to the judgment of the Court; Judge Ranjeva a separate opinion; Judge Herczegh a declaration; Judge Koroma a dissenting opinion; Judge Parra-Aranguren a separate opinion; Judge Rezek a declaration; Judge Al-Khasawneh and Judge ad hoc Mbaye a separate opinion; and Judge ad hoc Ajibola a dissenting opinion.

(b) *Sovereignty over Pulau Ligitan and Pulau Sipadan*
(Indonesia/Malaysia)

On 2 November 1998, Indonesia and Malaysia jointly notified the Court of a Special Agreement, which had been signed between them on 31 May 1997 at Kuala Lumpur and entered into force on 14 May 1998 with regard to their dispute concerning sovereignty over Pulau Ligitan and Pulau Sipadan, two islands in the Celebes Sea.

In the Special Agreement, the Parties requested the Court “to determine on the basis of the treaties, agreements and any other evidence furnished by [them], whether sovereignty over Pulau Ligitan and Pulau Sipadan belong[s] to the Republic of Indonesia or to Malaysia”. They further expressed the wish to settle their dispute “in the spirit of friendly relations existing between [them] as enunciated in the 1976 Treaty of Amity and Cooperation in Southeast Asia” and declared in advance that they would “accept the Judgment of the Court ... as final and binding upon them”.

Each of the Parties filed a Memorial, a Counter-Memorial and a Reply within the respective time limits of 2 November 1999, 2 August 2000 and 2 March 2001, fixed or extended by the Court or its President.

On 13 March 2001 the Philippines filed an Application for permission to intervene in the case. In its Application, the Philippines stated that it wished to intervene in the proceedings in order

“to preserve and safeguard [its Government’s] historical and legal rights ... arising from its claim to dominion and sovereignty over the

territory of North Borneo, to the extent that these rights are affected, or may be affected, by a determination of the Court of the question of sovereignty over Pulau Ligitan and Pulau Sipadan; ... to inform the ... Court of the nature and extent of [those] rights [; and] to appreciate more fully the indispensable role of the ... Court in comprehensive conflict prevention”.

The Philippines made it clear that it did not seek to become a Party to the case. In their written observations, filed within the time limit fixed by the Court, Indonesia and Malaysia objected to the Application for permission to intervene by the Philippines. After public hearings had been held from 25 to 29 June 2001, the Court, on 23 October 2001, delivered its judgment, by which it rejected the request of the Philippines for permission to intervene.

Public hearings on the merits were held from 3 to 12 June 2002. On 17 December 2002, the Court delivered its judgment on the merits of the case.

Final paragraph (para. 150)

“For these reasons,

THE COURT,

By sixteen votes to one,

Finds that sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia.

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buerghenthal, Elaraby; *Judge ad hoc* Weeramantry;

AGAINST: *Judge ad hoc* Franck.”

Judge Oda appended a declaration to the Judgment of the Court and Judge ad hoc Franck a dissenting opinion.

(c) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*

On 28 December 1998, the Republic of Guinea filed an Application instituting proceedings against the Democratic Republic of the Congo by an “Application with a view to diplomatic protection”, in which it requested the Court to “condemn the Democratic Republic of the Congo for the grave breaches of international law perpetrated upon the person of a Guinean national”, Mr. Ahmadou Sadio Diallo.

Guinea filed its Memorial within the time limit as extended by the Court. On 3 October 2002, within the time limit as extended for the de-

posit of its Counter-Memorial, the Democratic Republic of the Congo filed certain preliminary objections to the Court's jurisdiction and the admissibility of the Application; the proceedings on the merits were accordingly suspended (Article 79 of the Rules of Court).

By an Order of 7 November 2002 the Court fixed 7 July 2003 as the time limit within which Guinea might present a written statement of its observations and submissions on the preliminary objections raised by the Democratic Republic of the Congo. That written statement was filed within the time limit thus fixed.

(d) *Legality of Use of Force (Serbia and Montenegro v. Belgium) (Serbia and Montenegro v. Canada) (Serbia and Montenegro v. France) (Serbia and Montenegro v. Germany) (Serbia and Montenegro v. Italy) (Serbia and Montenegro v. Netherlands) (Serbia and Montenegro v. Portugal) and (Serbia and Montenegro v. United Kingdom)*

In each of the eight cases maintained on the Court's List, a written statement by Serbia and Montenegro on the preliminary objections raised by the respondent State concerned was filed on 20 December 2002, within the time limit as extended by the Court's Order of 20 March 2002.

(e) *Armed activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*

By an Order of 29 November 2001, the Court had found that the first two of the counter-claims submitted by Uganda against the Democratic Republic of the Congo were "admissible as such and [formed] part of the current proceedings", but that the third was not. In view of these findings, the Court considered it necessary for the Democratic Republic of the Congo to file a Reply and Uganda a Rejoinder, addressing the claims of both Parties, and fixed 29 May 2002 as the time limit for the filing of the Reply and 29 November 2002 for the Rejoinder. Further, in order to ensure strict equality between the Parties, the Court reserved the right of the Democratic Republic of the Congo to present its views in writing a second time on the Uganda counter-claims, in an additional pleading to be the subject of a subsequent Order. The Reply was filed within the time limit fixed. By an Order of 7 November 2002, the Court extended the time limit for the filing by Uganda of its Rejoinder and fixed 6 December 2002 as the new time limit. The Rejoinder was filed within the time limit as thus extended.

By an Order of 29 January 2003, the Court authorized the submission by the Democratic Republic of the Congo of an additional pleading relating solely to the counter-claims submitted by Uganda, and fixed 28 February 2003 as the time limit for its filing. That written pleading was filed within the time limit fixed.

The Court has fixed 10 November 2003 as the date for the opening of the hearings.

(f) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro)*

On 14 March 2001, within the time limit as extended by the Court, Croatia filed its Memorial. On 11 September 2002, within the extended time limit for the filing of its Counter-Memorial, Serbia and Montenegro filed certain preliminary objections to jurisdiction and admissibility. The proceedings on the merits were accordingly suspended (Article 79 of the Rules of Court).

(g) *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*

By an Order of 13 June 2002, the Court authorized the submission of a Reply by Nicaragua and a Rejoinder by Honduras and fixed the following time limits for the filing of these pleadings: 13 January 2003 for the Reply, and 13 August 2003 for the Rejoinder. The Reply of Nicaragua was filed within the time limit thus fixed.

(h) *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina)*

On 3 December 2001, within the time limit fixed by the Court for this purpose, Bosnia and Herzegovina filed written observations on the admissibility of the Application for revision made by Yugoslavia. In its observations, Bosnia and Herzegovina contended that the conditions set under Article 61 of the Statute of the Court were not met in this instance; it consequently requested the Court “to adjudge and declare that the Application for Revision of the judgment of 11 July 1996, submitted by ... Yugoslavia ... [was] not admissible”.

Public hearings were held on the question of the admissibility of the Application for revision from 4 to 7 November 2002. On 3 February 2003, the Court delivered its judgment.

Final paragraph (para. 75)

“For these reasons,

THE COURT,

By ten votes to three,

Finds that the Application submitted by the Federal Republic of Yugoslavia for revision, under Article 61 of the Statute of the Court, of the Judgment given by the Court on 11 July 1996, is inadmissible.

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Koroma, Parra-Aranguren, Al-Khasawneh, Buerghenthal, Elaraby; *Judge ad hoc* Mahiou;

AGAINST: *Judges* Vereshchetin, Rezek; *Judge ad hoc* Dimitrijevic.”

Judge Koroma appended a separate opinion to the judgment; Judge Vereshchetin a dissenting opinion; Judge Rezek a declaration; Judge ad hoc Mahiou a separate opinion; and Judge ad hoc Dimitrijevic a dissenting opinion.

(i) *Certain Property (Liechtenstein v. Germany)*

On 27 June 2002, Germany filed certain preliminary objections to the jurisdiction of the Court and the admissibility of the Application; the proceedings on the merits were accordingly suspended (Article 79 of the Rules of Court). Liechtenstein filed a written statement of its observations and submissions with regard to the preliminary objections raised by Germany, within the time limit of 15 November 2002, as fixed by the President of the Court. Following the filing of that document, the case is now ready for hearing.

(j) *Territorial and Maritime Dispute (Nicaragua v. Colombia)*

By an Order of 26 February 2002, the Court fixed 28 April 2003 and 28 June 2004 as the time limits for the filing of a Memorial by Nicaragua and of a Counter-Memorial by Colombia. The Memorial of Nicaragua was filed within the time limit thus fixed.

(k) *Frontier Dispute (Benin/Niger)*

On 3 May 2002, Benin and Niger jointly notified the Court of a Special Agreement, which had been signed between them on 15 June 2001 in Cotonou and entered into force on 11 April 2002.

Under article 1 of that Special Agreement, the Parties agreed to submit their boundary dispute to a Chamber to be formed by the Court; they also agreed that pursuant to Article 26, paragraph 2, of the Statute of the Court, each of them would choose a judge ad hoc.

Article 2 of the Special Agreement stated the subject matter of the dispute in the following terms:

“The Court is requested to:

(a) Determine the course of the boundary between the Republic of Benin and the Republic of Niger in the River Niger sector;

(b) Specify which State owns each of the islands in the said river, and in particular Lété Island;

(c) Determine the course of the boundary between the two States in the River Mekrou sector.”

Finally, article 10 contained a “special undertaking” as follows:

“Pending the judgment of the Chamber, the Parties undertake to preserve peace, security and quiet among the peoples of the two States.”

By an Order of 27 November 2002, the Court, after its President had been informed of the view of the Parties on the composition of the Chamber and had reported to it, decided to accede to the request of both Parties that it should form a special chamber of five judges, and formed a Chamber of three Members of the Court together with the two judges ad hoc chosen by the Parties, as follows: President Guillaume, Judge Ranjeva, Judge Kooijmans, Judge ad hoc Bedjaoui (chosen by Niger) and Judge ad hoc Bennouna (chosen by Benin).

The Court further fixed 27 August 2003 as the time limit for the filing of a Memorial by each Party.

(l) *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*

On 28 May 2002, the Democratic Republic of the Congo filed an Application instituting proceedings against Rwanda in respect of a dispute concerning:

“massive, serious and flagrant violations of human rights and of international humanitarian law” resulting “from acts of armed aggression perpetrated by Rwanda on the territory of the Democratic Republic of the Congo in flagrant breach of the sovereignty and territorial integrity of the [latter], as guaranteed by the United Nations and OAU Charters”.

In its Application, the Democratic Republic of the Congo stated that Rwanda had been guilty of “armed aggression” from August 1998 to the present day. According to the Democratic Republic of the Congo, that aggression had resulted in “large-scale human slaughter” in South Kivu, Katanga Province and the Eastern Province, “rape and sexual assault of women”, “assassinations and kidnapping of political figures and human rights activists”, “arrests, arbitrary detentions, inhuman and degrading treatment”, “systematic looting of public and private institutions, seizure of property belonging to civilians”, “human rights violations committed by the invading Rwandan troops and their ‘rebel’ allies in the major towns in the East” of the Democratic Republic of the Congo and “destruction of fauna and flora” of the country.

In consequence, the Democratic Republic of the Congo requested the Court to adjudge and declare that by violating the human rights which are the goal pursued by the United Nations through the maintenance of international peace and security, Rwanda had violated and was violating the Charter of the United Nations as well as articles 3 and 4 of the Charter of OAU; that it further had violated a number of instruments protecting human rights; that, by shooting down a Boeing 727 owned by Congo Airlines on 9 October 1998 in Kindu, thereby causing the death of 40 civilians, Rwanda had also violated certain conventions concerning international civil aviation; and that, by engaging in killing, slaughter, rape, throat-slitting and crucifying, Rwanda was guilty of genocide against more than 3.5 million Congolese, including the victims of the recent massacres in the city of Kisangani, and had violated the sacred right to life provided for in certain instruments protecting human rights as well as the Genocide Convention. It further asked the Court to adjudge and declare that all Rwandan armed forces should be withdrawn from Congolese territory; and that the Democratic Republic of the Congo was entitled to compensation.

In its Application, the Democratic Republic of the Congo, in order to found the jurisdiction of the Court, relied on a number of compromissory clauses in treaties.

On the same day, 28 May 2002, the Democratic Republic of the Congo submitted a request for the indication of provisional measures. Public hearings on the request for provisional measures were held on 13 and 14 June 2002. On 10 July 2002, the Court delivered its Order, by which, having found that it had no *prima facie* jurisdiction, it rejected the request of the Democratic Republic of the Congo. The Court, in that Order, also rejected the submissions by Rwanda seeking the removal of the case from the Court's List.

By an Order of 18 September 2002, the Court decided, in accordance with Article 79, paragraphs 2 and 3, of the revised Rules of Court, that the written pleadings would first be addressed to the questions of the jurisdiction of the Court and the admissibility of the Application, and fixed 20 January 2003 as the time limit for the Memorial of Rwanda and 20 May 2003 for the Counter-Memorial of the Democratic Republic of the Congo. Those pleadings were filed within the time limits thus fixed.

(m) *Application for revision of the judgment of 11 September 1992 in the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)*

On 10 September 2002, El Salvador filed an Application for revision of the judgment delivered on 11 September 1992 by the Chamber of the Court in the case concerning *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*. El Salvador indicated

that “the sole purpose of the application is to seek revision of the course of the boundary decided by the Court for the sixth disputed sector of the land boundary between El Salvador and Honduras”. El Salvador based its Application for revision on Article 61, paragraph 1, of the Statute of the Court.

In the Application El Salvador alleged that from the reasons given by the Chamber to establish the boundary line in the sixth sector, the following could be inferred:

“(1) That a decisive factor in dismissing El Salvador’s claim to a boundary along the old and original riverbed was the lack of evidence of an avulsion of the Goascorán River during the colonial period; and

(2) That a decisive factor that persuaded the Chamber to accept Honduras’s claim to a land boundary that follows the current course of the Goascorán, purported to be the course of the river at the time of independence in 1821, was the chart and the descriptive report of the Gulf of Fonseca that Honduras presented and that were supposedly drawn in 1796, as part of the expedition of the brigantine *El Activo*.”

El Salvador claimed that it had obtained scientific, technical and historical evidence which “demonstrates that the old course of the Goascorán River debouched in the Gulf of Fonseca at the Estero ‘La Cutu’, and that the river abruptly changed course in 1762”. It contended that this evidence, “which was not available to the Republic of El Salvador prior to the date of the Judgment, can be classified, for purposes of the revision, as a *new fact*, with a character such that it lays the case open to revision”.

El Salvador further claimed that “in the six months prior to making [its] application, [it] obtained cartographic and documentary evidence demonstrating the unreliability of the documents that form the backbone of the Chamber’s *ratio decidendi*. A new chart and a new report from the expedition of the brig *El Activo* have been discovered”.

El Salvador concluded that:

“For purposes of this revision, we have, then, a second *new fact*, whose implications for the Judgment have to be considered once the Application for revision is admitted. Because the evidentiary value of the ‘Carta Esférica’ and the report of the *El Activo* expedition is in question, the use of the Saco negotiations (1880-1884) for corroborative purposes becomes worthless, a problem compounded by what the Republic of El Salvador considers to be the Chamber’s erroneous assessment of those negotiations. In reality, far from reinforcing each other, the *El Activo* documents and the Saco documents contradict each other.”

According to El Salvador, the following assertions can be made on the basis of the scientific and historical evidence now available: “(a) that the present-day course of the Goascorán River was not the course of the river in 1880-1884, much less in 1821; (b) that the old riverbed was the

recognized boundary; and (c) that this riverbed was north of the Bay of La Unión, whose entire coastline belonged to the Republic of El Salvador”.

For all these reasons, El Salvador requested the Court:

“(a) To proceed to form the Chamber that will hear the application for revision of the Judgment, bearing in mind the terms that El Salvador and Honduras agreed upon in the Special Agreement of 24 May 1986;

(b) To declare the application of the Republic of El Salvador admissible on the grounds of the existence of new facts of such a character as to lay the case open to revision under Article 61 of the Statute of the Court; and

(c) Once the application is admitted, to proceed to the revision of the Judgment of 11 September 1992, so that a new Judgment will determine the boundary line in the sixth disputed sector of the land frontier between El Salvador and Honduras to be as follows:

‘Starting from the old mouth of the Goascorán River in the inlet known as the La Cutú Estuary situated at latitude 13° 22' 00" N and longitude 87° 41' 25" W, the frontier follows the old course of the Goascorán River for a distance of 17,300 metres as far as the place known as the Rompición de los Amates situated at latitude 13° 26' 29" N and longitude 87° 43' 25" W, which is where the Goascorán River changed its course.’”

By an Order of 27 November 2002, the Court, after its President had been informed of the view of the Parties on the composition of the Chamber and had reported to it, decided to accede to the request of both Parties that it should form a special chamber of five judges and formed a Chamber of three Members of the Court together with the two judges ad hoc chosen by the Parties, as follows: President Guillaume, Judge Rezek and Judge Buergenthal, Judge ad hoc Torres Bernardez (chosen by Honduras) and Judge ad hoc Paolillo (chosen by El Salvador).

The Court further fixed 1 April 2003 as the time limit for the filing of written observations by Honduras on the admissibility of the Application for revision. Those observations were deposited within the time limit thus prescribed.

The Chamber fixed 8 September 2003 as the date for the opening of the hearings on the admissibility of the request for revision.

(n) *Certain Criminal Proceedings in France (Republic of the Congo v. France)*

On 9 December 2002, the Republic of the Congo filed an Application by which it sought to institute proceedings against France seeking the annulment of the investigation and prosecution measures taken by the French

judicial authorities further to a complaint for crimes against humanity and torture filed by various associations against the President of the Republic of the Congo, Denis Sassou Nguesso, the Congolese Minister of the Interior, Pierre Oba, and other individuals including General Norbert Dabira, Inspector-General of the Congolese Armed Forces. The Application further stated that, in connection with these proceedings, an investigating judge of the Meaux *tribunal de grande instance* had issued a warrant for the President of the Republic of the Congo to be examined as witness.

The Republic of the Congo contended that by “attributing to itself universal jurisdiction in criminal matters and by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed by him in connection with the exercise of his powers for the maintenance of public order in his country”, France had violated “the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations ... exercise its authority on the territory of another State”. The Republic of the Congo further submitted that, in issuing a warrant instructing police officers to examine the President of the Republic of the Congo as a witness in the case, France violated “the criminal immunity of a foreign Head of State, an international customary rule recognized by the jurisprudence of the Court”.

In its Application, the Republic of the Congo indicated that it sought to found the jurisdiction of the Court, pursuant to Article 38, paragraph 5, of the Rules of Court, “on the consent of the French Republic, which will certainly be given”. In accordance with this provision, the Application by the Republic of the Congo was transmitted to the French Government and no action was taken in the proceedings.

(o) *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*

At a public sitting of 14 February 2002, the Court delivered its Judgment.

Final paragraph (para. 78)

“For these reasons,

THE COURT,

(1) (A) By fifteen votes to one,

Rejects the objections of the Kingdom of Belgium relating to jurisdiction, mootness and admissibility;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges ad hoc* Bula-Bula, Van den Wyngaert;

AGAINST: *Judge Oda*;

(B) By fifteen votes to one,

Finds that it has jurisdiction to entertain the Application filed by the Democratic Republic of the Congo on 17 October 2000;

IN FAVOUR: *President Guillaume; Vice-President Shi; Judges Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; Judges ad hoc Bula-Bula, Van den Wyngaert*;

AGAINST: *Judge Oda*;

(C) By fifteen votes to one,

Finds that the Application of the Democratic Republic of the Congo is not without object and that accordingly the case is not moot;

IN FAVOUR: *President Guillaume; Vice-President Shi; Judges Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; Judges ad hoc Bula-Bula, Van den Wyngaert*;

AGAINST: *Judge Oda*;

(D) By fifteen votes to one,

Finds that the Application of the Democratic Republic of the Congo is admissible;

IN FAVOUR: *President Guillaume; Vice-President Shi; Judges Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; Judges ad hoc Bula-Bula, Van den Wyngaert*;

AGAINST: *Judge Oda*;

(2) By thirteen votes to three,

Finds that the issue against Mr. Abdulaye Yerodia Ndombasi of the arrest warrant of 11 April 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of the Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Democratic Republic of the Congo enjoyed under international law;

IN FAVOUR: *President Guillaume; Vice-President Shi; Judges Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Buergenthal; Judge ad hoc Bula-Bula*;

AGAINST: *Judges Oda; Al-Khasawneh, Judge ad hoc Van den Wyngaert;*

(3) By ten votes to six,

Finds that the Kingdom of Belgium must, by means of its own choosing, cancel the arrest warrant of 11 April 2000 and so inform the authorities to whom that warrant was circulated.

IN FAVOUR: *President Guillaume; Vice-President Shi; Judges Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Rezek; Judge ad hoc Bula-Bula;*

AGAINST: *Judges Oda; Higgins, Kooijmans, Al-Khasawneh, Buergethal; Judge ad hoc Van den Wyngaert.”*

President Guillaume appended a separate opinion to the judgment of the Court; Judge Oda a dissenting opinion; Judge Ranjeva a declaration; Judge Koroma a separate opinion; Judges Higgins, Kooijmans and Buergethal a joint separate opinion; Judge Rezek a separate opinion; Judge Al-Khasawneh a dissenting opinion; Judge ad hoc Bula-Bula a separate opinion; and Judge ad hoc Van den Wyngaert a dissenting opinion.

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, at its 35th plenary meeting, on 21 October 2002, and the Security Council, at its 4629th meeting, on the same date, proceeding independently of one another, elected five members of the International Court of Justice, to replace five members whose terms had expired. In its decision 57/510, adopted on 29 October 2002, without reference to a Main Committee, the General Assembly took note of the report of the International Court of Justice.¹²⁹

6. INTERNATIONAL LAW COMMISSION¹³⁰

*Fifty-fourth session of the Commission*¹³¹

The International Law Commission held the first part of its fifty-fourth session from 29 April to 7 June 2002 and the second part from 22 July to 16 August 2002, at its seat at the United Nations Office at Geneva.

Regarding the topic “Reservations to treaties”, the Commission had before it the Special Rapporteur’s seventh report¹³² relating to the formulation, modification and withdrawal of reservations and interpretative declarations, which it considered, adopting commentaries to several draft guidelines. The Special Rapporteur further drew attention to section C of his report, involving reservations to human rights treaties, and expressed hopes that there would be further consultations between the Commission, the Committee

on the Elimination of Discrimination against Women and the other human rights bodies, with a view to the re-examination in 2004 of the preliminary conclusions adopted by the International Law Commission in 1997.

Concerning the topic “Diplomatic protection”, the Commission had before it for consideration the remainder of the second report of the Special Rapporteur,¹³³ regarding draft articles 12 and 13, as well as his third report.¹³⁴ The Commission further established an open-ended Informal Consultation on the question of the diplomatic protection of crews, as well as that of corporations and shareholders.

For the topic “Unilateral acts of States”, the Commission had before it the fifth report of the Special Rapporteur¹³⁵ and the text of the replies received from States to the questionnaire on the topic circulated on 31 August 2001.¹³⁶ The Commission considered the report and also established an open-ended Informal Consultation on unilateral acts of States.

Regarding the topic “International liability for injurious consequences arising out of acts not prohibited by international law (International liability in case of loss from transboundary harm arising out of hazardous activities)”, the Commission resumed its consideration of the second part of the topic. Furthermore, the Commission appointed Pemmaraju Sreenivasa Rao as Special Rapporteur for the topic.

Concerning the topic “Responsibility of international organizations”, the Commission decided to include it in its programme of work and appointed Giorgio Gaja as Special Rapporteur for the topic.

The Commission decided to include the topic “Fragmentation of international law: difficulties arising from the diversification and expansion of international law” in its programme of work. The Commission further established a Study Group on the topic and, subsequently, considered and adopted the report of the Study Group as amended.

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly adopted two resolutions concerning the International Law Commission and its work: resolution 57/16, entitled “Convention on jurisdictional immunities of States and their property”, adopted without a vote on the recommendation of the Sixth Committee, in which the Assembly took note of the report of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property.¹³⁷ It also adopted without a vote resolution 57/21, in which the Assembly took note of the report of the International Law Commission on the work of its fifty-fourth session and drew the attention of Governments to the importance for the Commission of having their views on the various aspects involved in the topics on the agenda of the Commission.

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW¹³⁸

Thirty-fifth session of the United Nations Commission on International Trade Law¹³⁹

The United Nations Commission on International Trade Law (UNCITRAL) held its thirty-fifth session in New York, from 17 to 28 June 2002.

During the session, the Commission, having considered the text of the draft model law, as revised by the drafting group, adopted the Model Law on International Commercial Conciliation,¹⁴⁰ and entrusted the UNCITRAL secretariat with the finalization of the Guide to Enactment and Use of the Model Law, based on the draft prepared by the secretariat and on the deliberations of the Commission at the session.

Regarding the UNCITRAL Model Law on International Commercial Arbitration of 1985, the Commission took note of the report of the Working Group on Arbitration on the work of its thirty-sixth session.¹⁴¹ The Commission commended the Working Group for the progress accomplished so far regarding the issues under discussion, namely, the requirement of the written form for the arbitration agreement and the issues of interim measures of protection.

Concerning the topic of insolvency law, the Commission noted the reports of the Working Group on the work of the twenty-fourth,¹⁴² twenty-fifth¹⁴³ and twenty-sixth session.¹⁴⁴ The Commission commended the Working Group for the progress accomplished so far in developing the legislative guide for a strong insolvency, debtor-creditor regime, and stressed the importance of continued cooperation with intergovernmental and non-governmental organizations having expertise and interest in insolvency law. With respect to the treatment of security interests in solvency proceedings, the Commission noted with satisfaction that the Working Groups on Insolvency Law and Security Interests had agreed on principles for treating issues of common concern.¹⁴⁵

Also regarding the topic of security interests, the Commission commended the secretariat for having prepared a first, preliminary draft of a legislative guide on several transactions,¹⁴⁶ for having organized, in cooperation with Commercial Finance Association, an international colloquium on secured transactions at Vienna from 20 to 22 March 2002, and for having prepared the report on the colloquium.¹⁴⁷

In connection with the topic of electronic commerce, the Commission took note of the report of the Working Group on the work of its thirty-ninth session,¹⁴⁸ which was held in New York from 11 to 15 March 2002, and noted that the Working Group had begun its consideration of a possible international instrument dealing with selected issues on electronic contracting. The Commission also took note of the progress made thus far

by the secretariat in connection with a survey of possible legal barriers to the development of electronic commerce in international trade-related instruments.

Concerning the topic of transport law, the Commission had before it the report of the ninth session of the Working Group on Transport Law,¹⁴⁹ held in New York from 15 to 26 April 2002, at which the consideration of the project commenced. At that session, the Working Group undertook a preliminary review of the provisions of the draft instrument on transport law contained in the annex to the note by the secretariat.¹⁵⁰ The Working Group also had before it the comments prepared by ECE and UNCTAD, which were reproduced in annexes to the note by the Secretariat.¹⁵¹

Regarding the topic of privately financed infrastructure projects, the Commission noted the report of the Working Group on the work of its fourth session,¹⁵² and commended the Working Group and the secretariat for the progress accomplished so far in developing a set of draft model legislative provisions for the Legislative Guide on Privately Financed Infrastructure Projects.

Concerning the case law on UNCITRAL texts (CLOUT), which consists of the preparation of case abstracts, a compilation of the full texts of decisions and the preparation of research aids and analytic tools such as thesauri and indices, the Commission noted that as of the date of the Commission's session, 36 issues of CLOUT had been published, dealing with 420 cases.

In connection with the status and promotion of UNCITRAL legal texts, on the basis of a note by the secretariat,¹⁵³ the Commission considered the status of the following conventions and model laws emanating from its work, as well as the status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958:

- Convention on the Limitation Period in the International Sale of Goods of 1974, as amended by the 1980 Protocol—17 States parties;
- [Unamended] Convention on the Limitation Period in the International Sale of Goods of 1974—24 States parties;
- United Nations Convention on the Carriage of Goods by Sea of 1978 (Hamburg Rules)—28 States parties;
- United Nations Convention on Contracts for the International Sale of Goods of 1980—61 States parties;
- United Nations Convention on International Bills of Exchange and International Promissory Notes of 1988—3 States parties (requires seven additional actions for entry into force);

- United Nations Convention on the Liability of Operators of Transport Terminals in International Trade of 1991—2 States parties (requires three additional actions for entry into force);
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit of 1995—6 States parties;
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958—129 States parties;
- UNCITRAL Model Law on International Commercial Arbitration of 1985;
- UNCITRAL Model Law on International Credit Transfers of 1992;
- UNCITRAL Model Law on Procurement of Goods, Construction and Services of 1994;
- UNCITRAL Model Law on Electronic Commerce of 1996; and
- UNCITRAL Model Law on Cross-Border Insolvency of 1997.

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, on the recommendation of the Sixth Committee, adopted, without a vote, a number of resolutions in the area of international trade law, including resolution 57/17, in which the Assembly took note of the report of UNCITRAL and reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international trade law. In resolution 57/18, the General Assembly expressed its appreciation to UNCITRAL for completing and adopting the Model Law on International Commercial Conciliation, the text of which follows:

**Model Law on International Commercial Conciliation of the United Nations
Commission on International Trade Law**

Article 1

SCOPE OF APPLICATION AND DEFINITIONS

1. This Law applies to international¹⁵⁴ commercial¹⁵⁵ conciliation.
2. For the purposes of this Law, “conciliator” means a sole conciliator or two or more conciliators, as the case may be.
3. For the purposes of this Law, “conciliation” means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons (“the conciliator”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute.
4. A conciliation is international if:
 - (a) The parties to an agreement to conciliate have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) The State in which the parties have their places of business is different from either:

- (i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or
- (ii) The State with which the subject matter of the dispute is most closely connected.

5. For the purposes of this article:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to conciliate;

(b) If a party does not have a place of business, reference is to be made to the habitual residence of the party.

6. This Law also applies to a commercial conciliation when the parties agree that the conciliation is international or agree to the applicability of this Law.

7. The parties are free to agree to exclude the applicability of this Law.

8. Subject to the provisions of paragraph 9 of this article, this Law applies irrespective of the basis upon which the conciliation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

9. This Law does not apply to:

(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and

(b) [...].

Article 2

INTERPRETATION

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3

VARIATION BY AGREEMENT

Except for the provisions of article 2 and article 6, paragraph 3, the parties may agree to exclude or vary any of the provisions of this Law.

Article 4

COMMENCEMENT OF CONCILIATION PROCEEDINGS¹⁵⁶

1. Conciliation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in conciliation proceedings.

2. If a party that invited another party to conciliate does not receive an acceptance of the invitation within thirty days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to conciliate.

Article 5

NUMBER AND APPOINTMENT OF CONCILIATORS

1. There shall be one conciliator, unless the parties agree that there shall be two or more conciliators.

2. The parties shall endeavour to reach agreement on a conciliator or conciliators, unless a different procedure for their appointment has been agreed upon.

3. Parties may seek the assistance of an institution or person in connection with the appointment of conciliators. In particular:

(a) A party may request such an institution or person to recommend suitable persons to act as conciliator; or

(b) The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

4. In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, where appropriate, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

5. When a person is approached in connection with his or her possible appointment as conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A conciliator, from the time of his or her appointment and throughout the conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 6

CONDUCT OF CONCILIATION

1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the conciliation is to be conducted.

2. Failing agreement on the manner in which the conciliation is to be conducted, the conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

3. In any case, in conducting the proceedings, the conciliators shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

4. The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute.

Article 7

COMMUNICATION BETWEEN CONCILIATOR AND PARTIES

The conciliator may meet or communicate with the parties together or with each of them separately.

Article 8

DISCLOSURE OF INFORMATION

When the conciliator receives information concerning the dispute from a party, the conciliator may disclose the substance of that information to any other party to the conciliation. However, when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the conciliation.

Article 9

CONFIDENTIALITY

Unless otherwise agreed by the parties, all information relating to the conciliation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 10

ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

1. A party to the conciliation proceedings, the conciliator and any third person, including those involved in the administration of the conciliation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in conciliation proceedings;

(b) Views expressed or suggestions made by a party in the conciliation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the conciliation proceedings;

(d) Proposals made by the conciliator;

(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the conciliator;

(f) A document prepared solely for purposes of the conciliation proceedings.

2. Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

4. The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the conciliation proceedings.

5. Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a conciliation.

Article 11

TERMINATION OF CONCILIATION PROCEEDINGS

The conciliation proceedings are terminated:

(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;

(b) By a declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration;

(c) By a declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) By a declaration of a party to the other party or parties and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Article 12

CONCILIATOR ACTING AS ARBITRATOR

Unless otherwise agreed by the parties, the conciliator shall not act as an arbitrator in respect of a dispute that was or is the subject of the conciliation proceedings or in

respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

Article 13

RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings.

Article 14

ENFORCEABILITY OF SETTLEMENT AGREEMENT¹⁵⁷

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable ... [*the enacting State may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement*].

In its resolution 57/19, the General Assembly took note of the recommendation contained in the report of the Office of Internal Oversight Services of the United Nations Secretariat on the in-depth evaluation of legal affairs,¹⁵⁸ regarding the strengthening of the secretariat of UNCITRAL and, in resolution 57/20, decided to increase the membership of the Commission from 36 to 60 States.

8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY AD HOC BODIES

In addition to the matters concerning the International Law Commission and international trade law, culminating in the resolutions discussed in the above sections, the Sixth Committee also considered additional items and submitted its recommendations thereon to the General Assembly at its fifty-seventh session. The Assembly adopted the following resolutions and decisions without a vote: resolution 57/14, entitled “Status of the Protocols Additional to the Geneva Conventions 1949 and relating to the protection of victims of armed conflicts”, in which it appreciated the virtually universal acceptance of the Geneva Conventions of 1949¹⁵⁹ and noted the trend towards a similarly wide acceptance of the two Additional Protocols of 1977,¹⁶⁰ and called upon States that were already parties to Additional Protocol I, or those States not parties, on becoming parties to Additional Protocol I, to make the decision provided for under article 90 of that Protocol.

In its resolution 57/15, entitled “Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular mis-

sions and representatives”, the General Assembly took note of the reports of the Secretary-General,¹⁶¹ and strongly condemned acts of violence against diplomatic and consular missions and representatives of international inter-governmental organizations and officials of such organizations and emphasized that such acts could never be justified. In resolution 57/22 on the report of the Committee on Relations with the Host Country, the Assembly endorsed the recommendations and conclusions on relations with the host country contained in paragraph 35 of the report.¹⁶² The Assembly further considered that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations and the observance of their privileges and immunities, which was an issue of great importance, were in the interest of the United Nations and all Member States, and requested the host country [the United States] to continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of missions.

In its resolution 57/23, entitled “Establishment of the International Criminal Court”, the General Assembly called upon States that were not yet parties to the Rome Statute of the International Criminal Court¹⁶³ to consider ratifying it or acceding to it without delay, and encouraged efforts aimed at promoting awareness of the results of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998, the provisions of the Statute and the process leading to the establishment of the Court. The Assembly further called upon all States to consider becoming parties to the Agreement on the Privileges and Immunities of the International Criminal Court¹⁶⁴ without delay.

With the adoption of resolution 57/24, the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,¹⁶⁵ and with the adoption of resolution 57/25, entitled “Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions”, the Assembly 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 that 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 of increasing the effectiveness of its methods and procedures applied in consideration of requests by the affected States for assistance. The Assembly further welcomed the measures taken by the Security Council since the adoption of General Assembly resolution 50/51, most recently the note by the President of the Council of 15 January 2002,¹⁶⁶ whereby the members of the Council agreed to extend the mandate of the informal working group of the Council

established in 2000 to develop general recommendations on how to improve the effectiveness of United Nations sanctions.

The General Assembly adopted resolution 57/26, entitled “Prevention and peaceful settlement of disputes”, in which it urged States to make the most effective use of existing procedures and methods for the prevention and the peaceful settlement of their disputes, in accordance with the principles of the Charter of the United Nations, and took note of the paper by the Secretariat entitled “Mechanisms established by the General Assembly in the context of dispute prevention and settlement”.¹⁶⁷

With the adoption of resolution 57/27, entitled “Measures to eliminate international terrorism”, the General Assembly, having examined the report of the Secretary-General,¹⁶⁸ the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996¹⁶⁹ and the report of the Working Group of the Sixth Committee established pursuant to resolution 56/88,¹⁷⁰ strongly condemned all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed. The Assembly further urged all States that had not yet done so to consider, as a matter of priority, and in accordance with Security Council resolution 1373 (2001), becoming parties to the relevant conventions and protocols as referred to in paragraph 6 of General Assembly resolution 51/210, as well as the International Convention for the Suppression of Terrorist Bombings¹⁷¹ and the International Convention for the Suppression of the Financing of Terrorism,¹⁷² and called upon all States to enact, as appropriate, the 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.

In its resolution 57/28, entitled “Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel”, the General Assembly expressed its appreciation for the work done by the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel,¹⁷³ and recommended that the Secretary-General continue to seek the inclusion of, and that host countries include, key provisions of the Convention, among others, those regarding the prevention of attacks against members of the operation, the establishment of such attacks as crimes punishable by law and the prosecution or extradition of offenders, in future as well as, if necessary, in existing status-of-forces, status-of-mission and host country agreements negotiated between the United Nations and those countries, mindful of the importance of the timely conclusion of such agreements. The Assembly further recommended that, consistent with his existing authority, the Secretary-General advise the Security Council or the General Assembly, as appropriate, where in his assessment circumstances would support a declaration of exceptional risk for the purposes of article 1 (c) (ii) of the Convention.

In its decision 57/512, the General Assembly welcomed the report of the Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings on its work from 25 February to 1 March 2002¹⁷⁴ and the report of the Working Group of the Sixth Committee established pursuant to General Assembly resolution 56/93 of 12 December 2001 on its work from 23 to 27 September 2002,¹⁷⁵ and decided that a working group of the Sixth Committee should be convened during the fifty-eighth session of the General Assembly from 29 September to 3 October 2003, in order to continue the work undertaken during the fifty-seventh session.

The General Assembly also granted observer status for participation in the work of the Assembly by the following organizations: Partners in Population and Development (resolution 57/29); Asian Development Bank (resolution 57/30); International Centre for Migration Policy Development (resolution 57/31); Inter-Parliamentary Union (resolution 57/32); and International Institute for Democracy and Electoral Assistance (decision 57/513).

9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

The United Nations Institute for Training and Research (UNITAR) continued to carry out its extensive training programmes in multilateral diplomacy and international affairs management and in the field of economic and social development.¹⁷⁶ During 2002, in the former category, UNITAR held a training programme in international law for French-speaking African countries in Cameroon and a workshop on “Conference Diplomacy and Multilateral Negotiations” in the Islamic Republic of Iran. Other examples included a regional workshop on environmental law and a major regional migration policy meeting in Istanbul. In the field of economic and social development, UNITAR carried out training and capacity-building programmes in chemicals and waste management during the year, as well as programmes in the area of climate change.

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, on the recommendation of the Second Committee, adopted without a vote resolution 57/268, in which the Assembly, taking note of the report of the Secretary-General¹⁷⁷ and the report of the Executive Director,¹⁷⁸ reaffirmed the relevance of UNITAR in view of the growing importance of training within the United Nations and the training requirements of States and the relevance of the

training-related research activities undertaken by the Institute within its mandate. The Assembly further stressed the need for the Institute to further strengthen its cooperation with other United Nations institutes and relevant national, regional and international institutes, and renewed its appeal to all Governments, in particular those of developed countries, and to private institutions that had not yet contributed financially or otherwise to the Institute, to give it their generous financial and other support, and urged the States that had interrupted their voluntary contributions to consider resuming them in view of the successful restructuring and revitalization of the Institute.

B. General review of the legal activities of intergovernmental organizations related to the United Nations¹⁷⁹

1. INTERNATIONAL LABOUR ORGANIZATION

Legal activities and decisions:
international labour standards

1. The International Labour Conference (ILC), which held its 90th session in Geneva in June 2002, adopted amendments to its Standing Orders:¹⁸⁰

- (a) Amendment to article 4 (Selection Committee);
- (b) Amendment to article 9 (Adjustment to the membership of committees);
- (c) Amendment to article 14 (Right to address the Conference);
- (d) Amendment to article 34 (General provisions);
- (e) Amendment to article 52 (Procedure of voting);
- (f) Amendment to article 56 (Composition of committees and right to participate in their work);
- (g) Deletion of article 75 (Procedure for the nomination of members of committees by the Government group).

ILC also adopted a Protocol to the Occupational Safety and Health Convention, 1981; a Recommendation on the List of Occupational Diseases;¹⁸¹ and a Recommendation on the Promotion of Cooperatives.¹⁸²

2. The Committee on the Application of Standards of ILC held a special sitting concerning the application by Myanmar of the Forced La-

bour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference at its 88th session (June 2000).¹⁸³

3. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 28 November to 13 December 2002 to adopt its report¹⁸⁴ to the 91st session of the Conference (2003).

4. Representations were lodged under article 24 of the Constitution of the International Labour Organization alleging non-observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).¹⁸⁵

5. The Governing Body of the International Labour Organization considered and adopted the following reports of its Committee on Freedom of Association: the 327th report¹⁸⁶ (283rd session, March 2002); the 328th report¹⁸⁷ (284th session, June 2002); and the 329th report¹⁸⁸ (285th session, November 2002).

6. The Working Party on the Social Dimensions of Globalization, established by the Governing Body, held two meetings in 2002 during the 283rd¹⁸⁹ (March 2002) and 285th¹⁹⁰ (November 2002) sessions of the Governing Body.

7. 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 a meeting in 2002 during the 283rd¹⁹¹ (March 2002) session of the Governing Body.

2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(a) International regulations

(i) *Entry into force of instruments previously adopted*

Within the period covered by this review, no multilateral conventions or agreements adopted under the auspices of UNESCO entered into force.

(ii) *Proposal concerning the preparation of new instruments*

During 2002, preparatory work was undertaken on a preliminary draft Convention for the Safeguarding of the Intangible Cultural Heritage¹⁹² and on a draft Recommendation on the Promotion and Use of Multilingualism and Universal Access to Cyberspace. Proposals for the adoption of these two new instruments were included on the provisional agenda of the 32nd session of the General Conference (October-November 2003).

(b) Human rights

Examination of cases and questions concerning the exercise of human rights coming within the fields of competence of UNESCO

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 15 to 17 May 2002 and from 1 to 4 October 2002 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its May 2002 session, the Committee examined 20 communications, of which 4 were examined with a view to determining their admissibility or otherwise, 14 were examined as to their substance, and 2 were examined for the first time. Nine communications were struck from the list because they were considered as having been settled. The examination of the remaining 11 was deferred. The Committee presented its report to the Executive Board at its 164th session.

At its October 2002 session, the Committee examined 16 communications, of which 3 were examined with a view to determining their admissibility, 8 were examined as to their substance and 5 new communications were submitted to the Committee. Two communications were declared inadmissible and 1 was struck from the list because it was considered as having been settled. The examination of the remaining 13 was deferred. The Committee presented its report to the Executive Board at its 165th session.

(c) Copyright activities

In 2002, UNESCO's activities in the field of copyright were mainly concentrated on:

- Information and public awareness activities.* The electronic version of the UNESCO *Copyright Bulletin* (in English, French and Spanish), as well as printed versions (quarterly in Chinese and Russian), were published. The *Copyright Bulletin* contains articles and information on national laws (new laws, revisions, updating), activities of the Organization in the field (meeting reports, résumés of actions undertaken, etc.), participation of States in various conventions, and new specialized books published throughout the world. In 2002 the *Bulletin* focused primarily on the challenges of digital technology for copyright. The translation into Arabic of the UNESCO *Manual on Copyright and Neighbouring Rights* was completed and was to be published in 2003;
- Training and teaching activities.* Teaching of copyright was continued by UNESCO Copyright Chairs. UNESCO had contributed to the strengthening of some Chairs and to the development of national expertise in the field of copyright by supplying them with pedagogical material (Tunisia, Algeria, the Russian Federation, Latin America). Pedagogical assistance had also been provided to Copyright Chairs

in the process of being set up in Cameroon, Senegal and Morocco. Copyright teaching days, open to a wide audience, were organized by UNESCO Copyright Chairs in the Russian Federation, Georgia, Tunisia and Algeria in relation to The World Book and Copyright Day, 23 April;

- *Studies and analyses.* In the light of the ever-evolving digital environment and the challenges it poses to copyright, UNESCO had undertaken a study on the exceptions and limitations to copyright protection in the digital era, particularly in the fields of scientific research, education and culture. Based on regional studies on the subject and on the replies to a questionnaire sent to right owners, users of protected works and national authorities, the study was to be finalized in 2003;
- *Collective administration of authors' rights.* A version in the Lithuanian language of the UNESCO *Guide on Collective Administration of Authors' Rights* was published with the support of the TACIS programme of the European Union.

3. WORLD HEALTH ORGANIZATION

(a) Constitutional and legal developments

On 27 September 2002, Timor-Leste joined the World Health Organization. Thus, at the end of 2002, there were 192 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 membership of the Executive Board from 32 to 34, was accepted by 94 Member States on 31 December 2002. The amendment to article 7 of the Constitution, adopted in 1965 by the eighteenth World Health Assembly to suspend certain rights of Members practising racial discrimination, was accepted by 80 of the Member States on December 2002. 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, was accepted by 74 Member States on 31 December 2002. Acceptance by two thirds of Member States, i.e. by 128 Member States, is required for the amendments to enter into force.

(b) Health legislation

(i) *Framework Convention on Tobacco Control*

By resolution WHA52.18 of 24 May 1999, the fifty-second World Health Assembly established a Working Group and an Intergovernmental

Negotiating Body (INB) to draft and negotiate a Framework Convention on Tobacco Control (FCTC) and possible related protocols.

By the end of the fourth session of INB (Geneva, 18-23 March 2002), the Co-Chairs for each of the Working Groups had issued revised Co-Chairs' streamlined texts. Working Group Three also completed a second reading of the textual proposals submitted by Member States on article J (Compensation and liability), article S (Development of the Convention) and article T (Final clauses), since these three articles had not been addressed in the initial Chair's text. It was agreed that a new Chair's text would be issued in July 2002 and considered by the fifth session of INB.

At the fifth session of INB (Geneva, 14-25 October 2002), the new Chair's text was discussed in plenary and informal meetings. Six issues were identified and discussed in open-ended informal meetings: advertising, promotion and sponsorship; financial resources; illicit trade in tobacco products; liability and compensation; packaging and labelling; and trade and health. Informal groups also held discussions on legal, institutional and procedural issues and on the use of terms. The possibility of elaborating protocols on illicit trade and cross-border advertising was also noted, but a majority of Member States expressed preference for completing the negotiations on the Convention before engaging in negotiations on protocols. On the basis of outputs from the fifth session, the Chair announced that he would issue a revised Chair's text of the convention on 13 January 2003.

In 2002, WHO organized and supported a number of regional and subregional intersessional meetings related to the negotiation of the FCTC.

(ii) *Other activities*

By December 2002, 162 of the WHO 192 Member States (84 per cent) had reported to WHO on action to give effect to the principles and aim of the International Code of Marketing of Breast-milk Substitutes, adopted by the World Health Assembly in 1981. This included adoption of new—or revision or strengthening of existing—legislation, regulations, national codes, guidelines for health workers and distributors, agreements with manufacturers, and monitoring and reporting mechanisms. A comprehensive global strategy for infant and young child feeding, which had been developed during the period 1999-2001, was formally endorsed by the fifty-fifth World Health Assembly in May 2002 (resolution WHA55.15). The Global Strategy reaffirms the relevance and urgency of giving effect to the International Code, and sets as a target consideration by Member States of what new legislation or other suitable measures may be required to give effect to the principles and aims of the International Code.

In 2002, WHO started to draft the Guidance Document on Mental Health, Human Rights and Legislation, which will be used as a framework to provide information and training to Member States in developing and implementing national mental health laws, during a series of international,

regional and subregional forums and national workshops planned for 2003-2004. WHO also provided technical advice and assistance in the review of the Mental Health Treatment Act currently being undertaken in Fiji.

During 2002, headquarters and regional offices of WHO provided technical cooperation to a number of Member States in connection with the development, assessment or review of various areas of health legislation. For example, the Regional Office for the Western Pacific provided assistance to Viet Nam related to the implementation of legislation to regulate private medical and pharmaceutical practice, as well as advice on a proposed decree on scientific-based fertilization and the proposed review of the Ordinance on the Prevention and Control of HIV/AIDS. The Regional Office for the Western Pacific also provided advice to Fiji, Kiribati and the Lao People's Democratic Republic on the drafting of food safety laws, and collaborated with many Member States from the Western Pacific Region to increase the adoption of Codex Alimentarius standards.

4. THE WORLD BANK

Loan-, Credit and Guarantee Agreements of the International Bank for Reconstruction and Development and the International Development Association that became effective during 2002 have been notified and forwarded for registration to the Office of Legal Affairs, Treaty Section, by separate communications during the course of 2002.

New members:

International Bank for Reconstruction and Development (IBRD):
Timor-Leste (23 July 2002);

International Development Association (IDA): Singapore (27 September 2002); Timor-Leste (23 July 2002);

Multilateral Investment Guarantee Agency (MIGA): Chad (11 June 2002); Rwanda (27 September 2002); Syrian Arab Republic (14 May 2002); Timor-Leste (23 July 2002);

International Centre for Settlement of Investment Disputes (ICSID):
Brunei Darussalam (16 October 2002); Timor-Leste (22 August 2002). Saint Vincent and the Grenadines deposited its instrument of ratification on 16 December 2002 (entry into force: 15 January 2003).

INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES

Signatures and ratifications

There were four new signatures and three ratifications of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the ICSID Convention) during 2002. At the end of the year, the number of signatories was 153 and the number of Contracting States 137.

Disputes before the Centre

During 2002, arbitration proceedings under the ICSID Convention were instituted in 18 new cases. These were:

- LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic* (case No. ARB/02/1);
- Impregilo S.p.A. v. Islamic Republic of Pakistan* (case No. ARB/02/2);
- Aguas del Tunari S.A. v. Republic of Bolivia* (case No. ARB/02/3);
- Lafarge v. Republic of Cameroon* (case No. ARB/02/4);
- PSEG Global Inc., The North American Coal Corporation, and Konya Ilgin Elektrik Uretim ve Ticaret Limited Sirketi v. Republic of Turkey* (case No. ARB/02/5);
- SGS Société Générale de Surveillance S.A. v. Republic of the Philippines* (case No. ARB/02/6);
- Hussein Nuaman Soufraki v. United Arab Emirates* (case No. ARB/02/7);
- Siemens A.G. v. Argentine Republic* (case No. ARB/02/8);
- Champion Trading Company and others v. Arab Republic of Egypt* (case No. ARB/02/9);
- IBM World Trade Corp. v. Republic of Ecuador* (case No. ARB/02/10);
- Enrho St Limited v. Republic of Kazakhstan* (case No. ARB/02/11);
- JacobsGibb Limited v. Hashemite Kingdom of Jordan* (case No. ARB/02/12);
- Salini Costruttori S.p.A. and Italstrade S.p.A. v. Hashemite Kingdom of Jordan* (case No. ARB/02/13);
- CDC Group plc v. Republic of the Seychelles* (case No. ARB/02/14);
- Ahmonseto, Inc. and others v. Arab Republic of Egypt* (case No. ARB/02/15);
- Sempra Energy International v. Argentine Republic* (case No. ARB/02/16);
- AES Corporation v. Argentine Republic* (case No. ARB/02/17);
- Tokios Tokenes v. Ukraine* (case No. ARB/02/18).

One arbitration proceeding was instituted under the ICSID Additional Facility Rules. This was:

Fireman's Fund Insurance Company v. United Mexican States (case No. ARB(AF)/02/1).

Five proceedings were discontinued. These were:

International Trust Company of Liberia v. Republic of Liberia (case No. ARB/98/3);

Philippe Gruslin v. Malaysia (case No. ARB/99/3);

GRAD Associates, P.A. v. Bolivarian Republic of Venezuela (case No. ARB/00/3);

AES Summit Generation Limited v. Republic of Hungary (case No. ARB/01/4);

Impregilo S.p.A. v. Islamic Republic of Pakistan (case No. ARB/02/2).

Six proceedings were closed following the rendition of awards by a tribunal or decisions of an ad hoc committee:

Wena Hotels Limited v. Arab Republic of Egypt (case No. ARB/98/4);

Mondev International Ltd. v. United States of America (case No. ARB(AF)/99/2);

Alex Genin and others v. Republic of Estonia (case No. ARB/99/2);

Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt (case No. ARB/99/6);

ADF Group Inc. v. United States of America (case No. ARB(AF)/00/1);

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka (case No. ARB/00/2).

As of 31 December 2002, 27 other cases were pending before the Centre. These were:

Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic (case No. ARB/97/3)—annulment proceeding;

Ceskoslovenska obchodni banka, a.s. v. Slovak Republic (case No. ARB/97/4);

Victor Pey Casado and President Allende Foundation v. Republic of Chile (case No. ARB/98/2);

The Loewen Group, Inc. and Raymond L. Loewen v. United States of America (case No. ARB(AF)/98/3);

Marvin Roy Feldman Karpa v. United Mexican States (case No. ARB(AF)/99/1);

Patrick Mitchell v. Democratic Republic of the Congo (case No. ARB/99/7);

Zhinvali Development Ltd. v. Republic of Georgia (case No. ARB/00/1);

Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco (case No. ARB/00/4);

Autopista Concesionada de Venezuela, C.A. v. Bolivarian Republic of Venezuela (case No. ARB/00/5);

Consortium R.F.C.C. v. Kingdom of Morocco (case No. ARB/00/6);

World Duty Free Company Limited v. Republic of Kenya (case No. ARB/00/7);

Ridgepointe Overseas Developments, Ltd. v. Democratic Republic of the Congo and Générale des Carrières et des Mines (case No. ARB/00/8);

Técnicas Medioambientales Tecmed, S.A. v. United Mexican States (case No. ARB(AF)/00/2);

Waste Management, Inc. v. United Mexican States (case No. ARB(AF)/00/3);

Generation Ukraine Inc. v. Ukraine (case No. ARB/00/9);

Antoine Goetz and others v. Republic of Burundi (case No. ARB/01/2);

Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic (case No. ARB/01/3);

Société d'Exploitation des Mines d'Or de Sadiola S.A. v. Republic of Mali (case No. ARB/01/5);

AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan (case No. ARB/01/6);

MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile (case No. ARB/01/7);

CMS Gas Transmission Company v. Argentine Republic (case No. ARB/01/8);

Booker plc v. Co-operative Republic of Guyana (case No. ARB/01/9);

Repsol YPF Ecuador S.A. v. Empresa Estatal Petróleos del Ecuador (Petro-ecuador) (case No. ARB/01/10);

Noble Ventures, Inc. v. Republic of Romania (case No. ARB/01/11);

Azurix Corp. v. Argentine Republic (case No. ARB/01/12);

SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan (case No. ARB/01/13);

F-W Oil Interests, Inc. v. Republic of Trinidad and Tobago (case No. ARB/01/14).

5. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(a) Membership

On 21 May 2002, Saint Kitts and Nevis deposited with the Government of the United States its notification of adherence to the Convention on International Civil Aviation with effect from 20 June, bringing the number of ICAO Contracting States to 188.

(b) Conventions and agreements

On 25 July, the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface entered into force, having been ratified by five signatory States. Two accessions by non-signatory States received earlier were formally deposited on the same date.

On 28 November, the Protocol relating to an Amendment to the Convention on International Civil Aviation (art. 50 (a)) entered into force, having been ratified by 108 States. The Protocol provides for the increase of the membership of the ICAO Council from 33 to 36 Contracting States. Three additional Contracting States represented on the Council were elected by the 34th (extraordinary) session of the Assembly held in Montreal, Canada, from 31 March to 1 April 2003.

(c) Other major legal developments

(i) *Work programme of the Legal Committee and legal meetings*

At its 167th session, the Council decided that the work programme of the Legal Committee should include the following:

1. Consideration of the establishment of a legal framework with regard to communications, navigation and surveillance/air traffic management (CNS/ATM) systems, including global navigation satellite systems (GNSS).

2. Acts or offences of concern to the international aviation community and not covered by existing air law instruments.

3. Consideration of the modernization of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface.

4. International interests in mobile equipment (aircraft equipment).

5. Review of the question of the ratification of international air law instruments.

6. Implications, if any, of the United Nations Convention on the Law of the Sea, for the application of the Convention on International Civil Aviation, its annexes and other international air law instruments.

Regarding item 1, the Secretariat Study Group on Legal Aspects of CNS/ATM Systems held its sixth meeting in Montreal from 21 to 22 March, and its seventh meeting in Washington from 30 October to 1 November. Pursuant to the decision of the 33rd session of the Assembly, the Group continued to consider a contractual legal framework for CNS/ATM. A draft model contractual clause was in preparation.

Regarding item 2, resolution A33-4, Adoption of national legislation on certain offences committed on board civil aircraft (unruly/disruptive passengers), was transmitted to Contracting States in June, along with circular 288-LE/1, *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*, prepared by the ICAO Secretariat. An evaluation of the status of the implementation of the model legislation set out in the resolution was in progress.

Regarding item 3, at the 8th meeting of its 166th session, on 5 June 2002, the Council took note of a study prepared by the Secretariat on the subject based on a questionnaire sent to Contracting States in June 2001, and agreed to the establishment of a Secretariat Study Group to assist the Secretariat in the future work on this subject. The first meeting of the Secretariat Study Group on the Modernization of the Rome Convention of 1952 was held from 12 to 13 December 2002 in Montreal.

Regarding item 4, the Preparatory Commission for the International Registry held its first meeting at ICAO headquarters in Montreal from 8 to 10 May 2002 and approved a documentation package with a view to launching an international tender for the selection of the Registrar when the necessary funds, to be provided by voluntary contributions from States and interested private parties, become available, in accordance with resolution No. 2 of the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol. In addition, the Preparatory Commission established a working group to review the draft regulations for the International Registry, which had been prepared prior to the Diplomatic Conference. The working group met in Washington from 4 to 6 September and in Montreal from 12 to 14 November, having agreed on a revised version of the draft regulations, which would be included in the documentation for tender package.

(ii) *Settlement of differences*

Regarding the settlement of differences between the United States and 15 European States (2000) relating to the European “Hushkits” regulation, No. 925/1999, further meetings of the parties, with the President of the Council as Conciliator, were held on 18 February and 13 May 2002 in Montreal. As the United States had acknowledged the repeal of the regulation on 26 March, by virtue of article 15 of Directive 2002/30/EC, the parties had agreed, in principle, to discuss the proceedings before the Council.

However, new circumstances arose, in particular, the issuance of the Royal Decree of 14 April 2002 by Belgium which, in the view of the United States, had re-enacted certain features of the “Hushkits” regulation, so that it wished

to discontinue the proceedings only against 14 of the 15 European States, i.e. not including Belgium. At the 12th meeting of its 166th session, on 12 June, the Council fixed the date of 31 July as the time limit for the Authorized Agent for the respondent 15 European States to state whether they objected to the discontinuance of the proceedings. By letter dated 24 July, ICAO was informed that, in the view of the respondents, the article 84 complaint should be withdrawn from all 15 European States. Further meetings of the Conciliator with the parties took place on 18 July in Brussels and on 16 October in Washington, D.C.

Furthermore, ICAO was informed on 16 October that the European Commission would open a formal procedure against Belgium for failing to properly implement Directive 2002/30/EC. Under this process, Belgium had two months to make observations, to be reviewed by the European Commission before it made a decision on further steps. Therefore, the Council, on 25 November, at the 10th meeting of its 167th session, decided to extend the time limit in the present case, to bring it forward to the 168th session of the Council. The President of the Council would continue to act as Conciliator, with the consent of the parties.

(iii) *Assistance in the field of aviation war risk insurance*

Noting with interest a proposal of the Special Group on Aviation War Risk Insurance (SGWI/2) (Montreal, 28-30 January 2002) for the setting up of an international insurance scheme, the Council, at the 6th meeting of its 165th session, agreed to establish the Council Group on Aviation War Risk Insurance (CGWI) to work with the Secretariat to review the recommendation of SGWI. The Group held two meetings: CGWI/1 (Montreal, 16 April) and CGWI/2 (Montreal, 24 April).

In consideration of the outcome of those meetings, and in line with resolution A33-20, Coordinated approach in providing assistance in the field of aviation war risk insurance, the Council, on 27 May, at the 4th meeting of its 166th session, approved in principle the recommendation of SGWI to establish a global aviation war risk insurance scheme. This included a draft Participation Agreement subject to finalization by the Secretariat with the assistance of an informal group of experts, for final approval by the Council. The commencement of the global scheme, participation in which is voluntary, would be subject to the signature of the Participation Agreement by a sufficient number of Contracting States, the sum of whose ICAO contribution rates should amount to at least 51 per cent, as indicated in resolution A33-26, Assessments to the General Fund for 2002, 2003 and 2004 (the Assembly resolution being used as the basis for determining the provision of guarantees to the global scheme).

The President of the Council accordingly informed Contracting States by State letter dated 6 June and 12 July, seeking expressions of intent to participate, by 15 October. Noting the status of replies from Contracting States, the Council, on 21 October, at the 3rd meeting of its 167th session, decided to further extend the time limit to 14 February 2003 (State letter dated 6 November, at which date States representing 40.56 per cent of annual contributions

to the Organization had declared their intention to participate in or to support the scheme “Globaltime”, some of which favourably but with conditions).

6. UNIVERSAL POSTAL UNION

In 2002, the Council of Administration approved resolution CA 1/2002 endorsing recommendations by the United Nations Joint Inspection Unit in its report “Enhancing Governance Oversight Role: Structure, Working Methods and Practices on Handling Oversight Reports” (JIU/REP/2001/4), pursuant to new processing and acceptance procedures that had been agreed between the UPU and JIU secretariats and approved at the 2001 session of the Council. The Director-General of the International Bureau of UPU was to submit appropriate proposals to the Council in 2003 for consideration as to follow-up on the JIU recommendations.

The Council of Administration Acts of the Union Project Team took note of the document which identified other intergovernmental organizations’ practices on reservations to their Acts. The findings of the questionnaire showed that the UPU practices were similar to those of other international organizations; however, the practices of other international organizations did not identify any solutions to the problems of UPU. The Project Team endorsed the suggestion of the International Bureau to draw up a set of guidelines on reservations to help member countries in formulating reservations and to facilitate the work of the Universal Postal Congress and the Postal Operations Council. It asked the Bureau to carry out a comparative analysis of the UPU rules and practices on the submission and approval of reservations to the UPU Convention vis-à-vis the rules and practices on reservations to the Regulations. The Project Team asked the Bureau to examine the terms “counter-reservation” and “objection to reservation”, with a view to clarifying the legal implications of the two terms. The Bureau was to re-examine the 2004 Congress schedule to identify possible ways to allow more time to discuss reservations at the next Congress. These decisions were duly endorsed by Committee 1 of the Council of Administration and were to be reported in 2003.

The Acts of the Union Project Team proposed amendments to the recast Convention which would harmonize the language and clarify certain provisions; the proposals were approved by the Council of Administration. This text of the recast Convention was approved by the Council in 2001 and was the basis upon which administrations would submit their proposals for the Convention to the Bucharest Congress.

The Acts of the Union Project Team began a study of certain fundamental terms in the Constitution, Regulations and Convention in order to

define those terms. The object was to determine whether to include the definitions in the Acts of the Union for the next Congress.

The Council of Administration approved in 2002 draft Rules of Procedure for the Consultative Committee to be presented for approval at Congress. This would enable the Advisory Group to commence work under the same rules as the future Consultative Committee. In 2001, the Council had approved the High-Level Group's recommendations to Congress to form a new permanent body of the Union, comprising interested stakeholders in the postal industry, to be called the Consultative Committee.

The purpose of the Council of Administration's Relations with the WTO Project Team was to enhance awareness among UPU members of WTO affairs through circular letters and through a Web page on the UPU site. In 2002 the Council approved the Project Team's request to post Council and Beijing Congress documents on the website to increase the transparency of its work and assist researchers, trade officials and industry stakeholders in getting a better understanding of the WTO perspectives on the implications of obligations under the General Agreement on Trade in Services (GATS) for postal markets. The WTO Project Team held two seminars on the main WTO issues of relevance to UPU members. A seminar entitled "Mind the GATS" was organized in April 2002. The second seminar, entitled "The Classification Debate: Defining Postal, Courier, and Express Delivery Services for World Trade Organization (WTO) Negotiations", took place in October 2002. The requests by UPU for observer status in WTO and for a Memorandum of Understanding with WTO were still pending. In the meantime, informal cooperation between UPU and WTO was working well. The International Bureau was continuing its close contact with the WTO Secretariat to follow up on cooperative measures.

UPU signed a Memorandum of Understanding with IAEA after six years of collaborative work on an informal basis. The objective of the MOU was a pledge to cooperate more closely to ensure the safety of the international mail network through early detection of illicit transport of radioactive materials and the safe shipment of accepted materials. The UPU/Postal Security Action Group Interagency Working Group on Dangerous Goods would develop projects of mutual interest, such as joint training programmes and awareness campaigns.

7. INTERNATIONAL MARITIME ORGANIZATION

(a) Membership of the Organization

During 2002 the Republic of San Marino became a Member of the Organization. Membership of the Organization now stands at 162. Follow-

ing the declaration by the Kingdom of Denmark on 2 December 2002 that the Faroe Islands had become an Associate Member of IMO, there are now three Associate Members.

(b) Review of the legal activities of IMO

The Legal Committee held its eighty-fourth session from 22 to 26 April 2002 and its eighty-fifth session from 22 to 24 October 2002.¹⁹³ For the first time (and as endorsed by the Committee at its eighty-third session), a session (eighty-fifth) of the Legal Committee was held back to back with a Diplomatic Conference (the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974).

International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974

The International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, took place at the headquarters of IMO from 21 October to 1 November 2002. The Conference was convened by decision of the Council at its twenty-first extraordinary session, which was endorsed by the Assembly at its twenty-second regular session by resolution A.906(22).

Seventy-one States were represented by delegations at the Conference. The Czech Republic was represented by an observer delegation. Hong Kong, China, an Associate Member of the Organization, also sent observers to the Conference. Observers from 4 intergovernmental organizations and from 17 non-governmental international organizations in consultative status with IMO also participated in the Conference.

As a result of its deliberations, the Conference adopted a treaty instrument, the text of which is in document LEG/CONF.13/20, entitled Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

The main objective of the Protocol is to provide compensation in adequate measure for loss of human life and physical injury for passengers travelling by sea. The compensation available under the 1974 Athens Convention has been substantially enhanced under the Protocol. Moreover, to the benefit of passengers, the notion of strict liability of the carrier has been introduced into the Convention, as well as that of compulsory insurance and a simplified procedure for updating the limitation amounts. As with all IMO Conventions, the aim of this new treaty is to create an internationally accepted regime, so that the shipping industry does not become subject to a variety of individual national schemes. The Protocol will enter into force 12 months following the date on which 10 States have expressed their consent to be bound by it.

Sixty-four States signed the Final Act of the Conference, the text of which is in document LEG/CONF.13/21.

The Conference also adopted the following resolutions, the texts of which are contained in the attachment to the Final Act and also in document LEG/CONF.13/22: (a) Resolution on Regional Economic Integration Organizations; (b) Resolution on certificates of insurance or other financial security and ships flying the flag of a State under the terms of a bareboat charter registration; (c) Resolution on framework of good practice with respect to carriers' liabilities.

Draft convention on wreck removal

The Committee at its eighty-fourth and eighty-fifth sessions concentrated on this item. The Committee considered submissions on the result of intersessional consultations regarding the development of the draft convention, the relationship between the draft convention and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, and a proposal to reinstate the definition of "flag State" throughout the draft. It also considered other pending issues in the draft convention including financial liability for locating, marking and removing wrecks, evidence of financial security, measures to facilitate the removal of wrecks, and the question of whether a State would be deemed to give advance consent to the exercise by a coastal State of authority to remove wrecks, where this was not otherwise permitted under international law. In connection with measures to facilitate the removal of wrecks, the Committee requested the Secretariat to prepare a document on the mandate of IMO to regulate the coastal State's intervention powers in the exclusive economic zone (EEZ) within the framework of international law, including the United Nations Convention on the Law of the Sea (UNCLOS).

In the course of its discussion on financial security, the Committee considered whether the term "act of terrorism" should be expressly included in the draft.

The Committee approved in principle the contents of article 12, which aimed at ensuring that the draft convention did not overlap and conflict with other liability regimes. The Committee also broadly supported the inclusion of article 10 on measures to facilitate the removal of wrecks, but noted the diverging views on whether to replace the expression "State of the ship's registry" with "flag State", as well as with regard to the power of the coastal State to remove wrecks.

A debate was held on the contents of article 13 regulating financial security. The Committee invited the representative of the International Group of P&I [Protection and Indemnity] Clubs to submit a written proposal on the features and extent of the evidence of financial security, covering, in particular, the effect of a valid Certificate of Entry in a Club Member.

The Committee decided to delete article 2 (4), under the terms of which a State would be deemed to give advance consent to coastal States to rescue wrecks where this was not otherwise permitted under international law.

Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA treaties)

The Committee considered a draft protocol to the SUA treaties submitted by the United States as lead country for an intersessional Correspondence Group, as well as another submission on the need to avoid overlap and duplication with other treaties.

The Committee held a preliminary discussion on the main features in the draft protocol, covering proposed new offences, attempts, accomplice liability, duress or threats, the elimination of the political offence exception, the transfer of persons to assist in investigations and prosecutions, new boarding provisions, the exclusion of armed forces, replacement of the concept of flag State by that of nationality of the ship and exemption of naval auxiliaries.

While some concern was expressed at the possibility of overlapping and duplication with other treaties, it was also noted that some overlap might be unavoidable in order to close the gaps that would arise if some States did not become party to other conventions on terrorism and if some States did not become party to the new protocol. It was suggested that the Correspondence Group should look into the issue.

Concern was also expressed about the drafting of the articles on attempts. The Correspondence Group was requested to examine each proposed offence individually to determine whether it was appropriate to add an attempt of that offence as a separate offence. The view was also put, in relation to draft article 5 (3) on accomplice liability, that abetting an offence was already covered in the Convention.

There was some support in principle for the removal of the political offence exception. However, some delegations cautioned against its removal bearing in mind the expansion of offences and the widening of the scope of other provisions of the treaty. In order to meet concerns about human rights safeguards, the suggestion was made to include a provision similar to that contained in article 15 of the International Convention for the Suppression of the Financing of Terrorism. That article enables a State to refuse a request for extradition or mutual assistance if there are grounds for believing it was made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion.

Concern was expressed on the introduction of new boarding provisions. Reference was made to the potential lack of compatibility between

the proposed boarding procedures and the principles of freedom of navigation and flag State jurisdiction. Doubts were also expressed about the compelling need for such an article and its potential for abuse in its practical application. The Committee also voiced its concern about the safety of crews who might be exposed to hijacking by individuals posing as members of armed forces of a State. It was suggested that additional safeguards might need to be developed to protect seafarers.

The Committee did not agree with the proposed new language to describe nationality of the ship and preferred to retain the traditional language of “flying the flag” included in other IMO Conventions as well as in UNCLOS.

The Committee indicated its strong preference in favour of retaining the traditional language for the exclusion of naval auxiliaries used in other international instruments. Doubts were expressed as to the feasibility of excluding the armed forces of a State from the ambit of the Convention.

The Committee noted that the convening of an intersessional group would be premature in view of the preliminary nature of the deliberations at this stage. The Committee accordingly decided to instruct the Correspondence Group to continue its deliberations. In so doing it emphasized the need for transparency and for circulation of all comments submitted to the Group. It was further suggested that the Maritime Safety Committee might consider the safety aspects of the draft proposals.

Monitoring the implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention)

The Committee noted the progress made by the Correspondence Group established by the Committee at its eightieth session to assist the Committee in monitoring the implementation of the HNS Convention. In particular, the Committee noted that an IMO HNS Correspondence Group website had been set up and would continue to be updated. This website was linked to the IMO website which also displayed relevant information regarding the HNS Convention.

In response to requests made at the eighty-fourth session of the Legal Committee for information on the reasons why Governments should join the HNS regime, the Committee noted the information submitted to it on some 65 incidents involving the international carriage of hazardous and noxious substances since 1995. Member States were encouraged to add any relevant information to the list.

The Committee noted the work done by the International Oil Pollution Compensation Funds on the development of an electronic database to report contributing cargo under the HNS Convention. There was also support for a proposal to request the IMO Secretariat to monitor cargo

contributions and report on them to each session of the Legal Committee in order to identify the point of entry into force of the HNS Convention.

Provision of financial security: Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

The Committee took note of an oral report on the fourth session of the Joint Group, as well as of the fact that the Group had entered the second part of its mandate, consisting in monitoring the implementation of resolutions A.930(22) and A.931(22) and related Guidelines adopted by the IMO Assembly on 29 November 2001.

The Committee also noted that, in order to help this monitoring process, the Group had prepared two questionnaires to be sent to competent national administrations and to relevant organizations. The Committee requested the Secretariat to circulate the two questionnaires and encouraged Governments and the relevant organizations to submit the required information, taking into account the report of the fourth session of the Ad Hoc Working Group. The holding of a fifth session of the Group was endorsed by the Committee.

Draft protocol to amend the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention)

In its eighty-fourth session, the Committee noted background information on the preparation of the draft protocol to the Fund Convention submitted by the Chairman of the 1992 Fund Assembly. The draft protocol had been approved by the 1992 Assembly. If adopted, the protocol would establish an optional supplementary Fund open to States parties to the 1992 Fund Convention to pay compensation for claims exceeding the limits established in the Fund Convention and the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC Convention).

The Committee approved the draft text as contained in document LEG 84/5 and concluded that the draft protocol was ready for submission to a diplomatic conference and that it had good prospects both for adoption by the conference and for subsequent implementation by States.

Code of practice for the investigation of crimes of piracy and armed robbery at sea

At its eighty-fourth session, the Committee agreed to keep the matter in its work programme and on its agenda for the eighty-sixth session and to revert to it at a future session. The Committee also requested the Secretariat to make available resolution A.922(22) and to make the relevant part of its report available to the Maritime Safety Committee (MSC).

Technical cooperation—subprogramme for maritime legislation

The Committee noted the progress report on the implementation of the subprogramme from January to June 2002.

The Committee also noted the information provided by the Director of the Technical Cooperation Division on the main features of implementation of the subprogramme in view of the ongoing requests for assistance received from many countries wishing to update their maritime legislation. In this regard the Committee took note of the external constraints on implementation, including the need to identify qualified consultants to provide advice in the field of maritime law.

Matters arising from the eighty-eighth session of the Council

The Committee took note of the information on matters relevant to the Committee arising from the eighty-eighth session of the Council.

Review of status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee

The Committee took note of the information provided by the Secretariat and by Member States on the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee.

Other matters

Decision on the measures to protect crews and passengers against crimes on vessels

The Committee noted information on an incident on the high seas involving the suspicious death of a seafarer. In particular, the Committee considered the difficulties for a flag State geographically far from the place of the incident to take steps to exercise jurisdiction over such an incident. Delegations were divided in their opinions as to whether the SUA treaties would, or would not, apply to the incident. Concern was expressed at the suggestion that a coastal State should be compelled to accept delivery of a foreign suspect in the event of a crime committed on a foreign-flag ship on the high seas.

Some delegations expressed the view that although it might not be necessary to develop a new international convention to address this matter, guidelines might be developed for masters and coastal States to provide practical guidance on how to handle such situations and to remind flag States of their responsibilities to enforce criminal law on ships flying their flag.

The Committee agreed that it would not be appropriate to include this matter as part of the review of the SUA Convention. It also noted that it

would be premature to include this matter on its work programme as a separate item until additional information was available on current State practice and domestic law.

The Committee accepted the offer by the Comité Maritime International (CMI) to develop a questionnaire, in consultation with the Secretariat of the IMO Legal Office, to be sent by IMO to Member Governments to solicit information which may be relevant to the Committee's further consideration of this matter.

Places of refuge

The Committee noted the information provided by the Secretariat and by the Assistant Secretary-General and Director of MSC on the work of several IMO bodies in this regard. In particular the Committee noted that three draft Assembly resolutions were being considered, and that if so requested by MSC at its seventy-sixth session in December 2002, it might have to consider work in progress from a legal perspective in matters such as liability and compensation for damage arising from entry of a ship in need of assistance into a place of refuge.

The Committee further noted the results of a CMI survey conducted at the Committee's request, to ascertain the extent to which domestic law dealt with the problem of vessels in distress seeking refuge. In this regard the Committee noted that the responses of the CMI members did not indicate that States had imposed legal liabilities on the owners of such vessels and that CMI was in the process of analysing the liability issues.

The Committee requested the Secretariat to circulate the draft resolutions well in advance of the Committee's next session. The Secretariat was also requested to review, in cooperation with CMI, the provisions of existing international instruments and of national law dealing with liability and compensation and their application to places of refuge.

Treatment of persons rescued at sea

The Committee at its eighty-fifth session took note of information on the work of other IMO bodies on treatment of persons rescued at sea as well as of the Secretary-General's initiative in promoting inter-agency cooperation in this regard.

The Committee decided that there was no specific action to be taken at this session. However, it noted that it might be requested by other IMO bodies to examine particular issues, and that it would need to decide at its next session what interim report to submit to the Council for transmission to the twenty-third Assembly.

(c) Amendments to treaties

2002 amendments to the Annex to the Convention on Facilitation of International Maritime Traffic, 1965, as amended

These amendments were adopted by the Facilitation Committee on 10 January 2002 by resolution FAL.7(29). At the time of their adoption, the Facilitation Committee determined that they would enter into force on 1 May 2003, unless, prior to 1 February 2003, at least one third of Contracting Governments had notified the Secretary-General in writing that they did not accept the amendments.

2002 (chapters IV, V, VI and VII and appendix to the Annex) amendments to the International Convention for the Safety of Life at Sea, 1974

These amendments were adopted by the Maritime Safety Committee on 24 May 2002 by resolution MSC.123(75). At the time of adoption, MSC determined that these amendments would be deemed to have been accepted on 1 July 2003 and would enter into force on 1 January 2004, unless, prior to 1 July 2003, more than one third of the Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As at 31 December 2002, no notification of objection had been received.

2002 amendments to the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974

These amendments were adopted by MSC on 24 May 2002 by resolution MSC.124(75). At the time of adoption, the Committee determined that these amendments would be deemed to have been accepted on 1 July 2003 and would enter into force on 1 January 2004, unless, prior to 1 July 2003, more than one third of the parties to the Protocol, or parties the combined merchant fleets of which constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As at 31 December 2002, no notification of objection had been received.

2002 amendments to the Guidelines on the enhanced programme of inspections during surveys of bulk carriers and oil tankers (resolution A.744(18)), as amended (under the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74))

These amendments were adopted by MSC on 24 May 2002 by resolution MSC.125(75). At the time of adoption, the Committee determined that these amendments would be deemed to have been accepted on 1 July 2003

and would enter into force on 1 January 2004, unless, prior to 1 July 2003, more than one third of the SOLAS Contracting Governments, or SOLAS Contracting Governments the combined merchant fleets of which constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As at 31 December 2002, no notification of objection had been received.

*International Maritime Dangerous Goods Code
(under SOLAS 74)*

This Code was adopted by MSC on 24 May 2002 by resolution MSC.122(75). The Code would take effect on 1 January 2004, upon the entry into force of the corresponding 2002 amendments to chapter VII of SOLAS, adopted by resolution MSC.123(75). The Code might be applied by SOLAS Contracting Governments, on a voluntary basis, as from 1 January 2003.

2002 amendments to the Condition Assessment Scheme (under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78))

These amendments were adopted by the Marine Environment Protection Committee on 11 October 2002 by resolution MEPC.99(48). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 September 2003 and would enter into force on 1 March 2004, unless, prior to 1 September 2003, not less than one third of the parties to MARPOL 73/78, or parties the combined merchant fleets of which constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified to the Organization their objection to the amendments. As at 31 December 2002, no notification of objection had been received.

2002 amendments to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973

The Marine Environment Protection Committee at its forty-eighth session, on 11 October 2002, adopted, by resolution MEPC.100(48), an amended list of substances to be annexed to the Protocol. The amended list would be deemed to have been accepted at the end of the period of six months after it had been communicated, unless, within that period, an objection to these amendments had been communicated to the Organization by not less than one third of the parties to the Protocol. The amended list would enter into force three months after it had been deemed to have been accepted. As at 31 December 2002, no notification of objection had been received.

*International Code for the Security of Ships
and of Port Facilities (under SOLAS 74)*

A Conference of Contracting Governments to SOLAS 74, held in London from 9 to 13 December 2002, adopted the International Code for the Security of Ships and of Port Facilities. In accordance with resolution 2 of the Conference, the Code would take effect on 1 July 2004, upon the entry into force of the new chapter XI (Special measures to enhance maritime security) of the Convention, which the Conference adopted under resolution 1.

2002 (chapter II-1) amendments to SOLAS 74

These amendments were adopted by MSC on 12 December 2002 by resolution MSC.134(76). At the time of their adoption, the Committee determined that these amendments would be deemed to have been accepted on 1 January 2004 and would enter into force on 1 July 2004, unless, prior to 1 January 2004, more than one third of the Contracting Governments to the SOLAS Convention, or Contracting Governments the combined merchant fleet of which constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As at 31 December 2002, no notification of objection had been received.

2002 amendments to the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code) (under SOLAS 74)

These amendments were adopted by MSC on 12 December 2002 by resolution MSC.135(76). At the time of their adoption, the Committee determined that these amendments would be deemed to have been accepted on 1 January 2004 and would enter into force on 1 July 2004 unless, prior to 1 January 2004, more than one third of the Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As at 31 December, no notification of objection had been received.

*Adoption of technical provisions for means of access for inspections
(under SOLAS 74)*

These technical provisions were adopted by MSC on 12 December 2002 by resolution MSC.133(76). At the time of their adoption, the Committee determined that they would become mandatory on 1 July 2004, upon the entry into force of the new regulation II-1/3-6 of SOLAS 74, adopted under resolution MSC.134(76), but would take effect only on 1 January 2005.

8. WORLD INTELLECTUAL PROPERTY ORGANIZATION

(a) Introduction

In the year 2002, the World Intellectual Property Organization (WIPO) concentrated on the implementation of substantive work programmes through three sectors: cooperation with Member States, the international registration of intellectual property rights, and intellectual property treaty formulation and normative development. WIPO also explored and promoted new intellectual property concepts, strategies and issues covering four areas, namely genetic resources, traditional knowledge and folklore, small and medium-sized enterprises (SMEs) and intellectual property, electronic commerce and intellectual property, and intellectual property enforcement issues and strategies.

(b) Cooperation for development activities

In 2002, the cooperation for development activities undertaken by WIPO supported developing countries in optimizing their intellectual property systems for economic, social and cultural benefits. The main forms in which WIPO provided assistance to developing countries continued to be the development of human resources, and the provision of legal advice and technical assistance for the automation of administrative procedures.

The Forum on Strategic Issues for the Future, held under the auspices of the Permanent Committee on Cooperation for Development, stimulated debate among Member States on a number of issues to help shape the direction of cooperation for development activities in the next biennium.

WIPO continued to provide legislative assistance to developing countries and least developed countries (LDCs). In 2002, WIPO provided 21 draft laws on intellectual property to 21 countries, and prepared 24 comments on draft or enacted laws at the request of Governments. In addition, consultations on legislation were held with officials from 13 countries.

Responding to the special needs of LDCs, particularly in assisting them in developing policies to effectively implement and use the intellectual property system to meet their development objectives, became an increasingly pressing task given the 2006 deadline for compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

The development of human resources being a crucial strategic component in efforts to modernize the intellectual property system, the WIPO Worldwide Academy (WWA) contributed to this goal through policy development, professional training, and its distance learning programme.

As the richness of the culture and heritage of many developing countries and LDCs originates with their creators and owners of copyright and related rights, WIPO pursued its assistance to national copyright administrations and collective management organizations.

(c) Norm-setting activities

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.

The establishment of common principles and rules governing intellectual property requires extensive consultations. Three WIPO standing committees on legal matters—one dealing with copyright and related rights, one dealing with patents, and one dealing with trademarks, industrial designs and geographical indications—help Member States centralize the discussions, coordinate efforts and establish priorities in these areas.

Standing Committee on the Law of Patents (SCP)

In 2002, discussions continued in the framework of SCP towards the harmonization of substantive patent law, with a view to agreeing on a number of legal principles relating to the examination of patent applications and the grant and validity of patents. Discussions were based on a draft Substantive Patent Law Treaty (SPLT), and SCP made further progress towards a common understanding on several issues arising from differences that exist among patent systems. The SCP agreed, in principle, on a number of provisions contained in the draft SPLT (e.g. scope of the SPLT, definition of prior art, novelty, incentive step/non-obviousness, sufficiency of disclosure). In respect of other issues (e.g. provisions on patentable subject matter or on exceptions to be included in the Treaty), it emerged that there was a need for further discussions. It was also decided to include proposals relating to the protection of public health, genetic resources, traditional knowledge and a number of other policy issues in the draft treaty.

Standing Committee on Trademarks (SCT)

In 2002, SCT made progress towards the harmonization of rules and principles of the law of trademarks, industrial designs and geographical indications and the modernization of the Trademark Law Treaty. Apart from the introduction of provisions on electronic filing, SCT also decided to address other formal requirements for the registration of marks and related procedures.

As regards the protection of geographical indications, the work of SCT in 2002 focused on the promotion of a better understanding of the issues involved and of the characteristics of the existing systems of protection. In this regard, SCT addressed, in particular, questions relating to definitions, protection in the country of origin, protection abroad, practical differences between the existing systems, generic terms, conflicts between trademarks and geographical indications, and conflicts between homonymous geographical indications.

Standing Committee on Copyright and Related Rights (SCCR)

In 2002, SCCR made substantial progress towards preparing the ground for a possible international instrument on the protection of broadcasting organizations. The Committee generally agreed on the need to fully clarify the scope of protection before granting specific rights to the various stakeholders, as well as on the need to balance stakeholder interests with those of the general public. The issue of the protection of non-original databases was also discussed on the basis of six studies on the impact of the protection of such databases, as well as an overview of existing national and regional legislation in this field, prepared by the Secretariat.

The future programme of SCCR was significantly broadened to include such topics as the responsibility of Internet service providers, applicable law in respect of international infringements, voluntary copyright registration systems, resale right or *droit de suite*, ownership of rights on multimedia productions, technological measures of protection, limitations and exceptions in the digital environment, collective management of copyright and related rights and copyright protection of folklore.

Standing Committee on Information Technologies (SCIT)

In 2002, SCIT, through its various meetings (SCIT plenary session, one session of the SCIT Information Technology Projects Working Group and two sessions of the SCIT Standards and Documentation Working Group), continued to serve as a forum to give policy guidance and technical advice on the overall information technology strategy of WIPO, including WIPO standards and the documentation aspects of intellectual property.

(d) International registration activities

Patents

Use of the Patent Cooperation Treaty (PCT) continued to grow throughout 2002. About 114,000 applications were filed worldwide under PCT in 2002, representing a 10 per cent increase compared to 2001. The number of countries participating in the PCT system rose as well, to 118.

At its annual session, the Assembly of the PCT Union adopted a number of measures designed to further streamline and simplify the fil-

ing system under PCT. The measures included an enhanced international search and preliminary examination system, the introduction of a new system of designating countries in which patents are sought, and a fee reduction for international applications filed in electronic form.

PCT electronic filing

A new pilot project the PCT-SAFE (Secure Applications Filed Electronically) for PCT electronic filing was launched, based on the present PCT-EASY (Electronic Application System). As part of the pilot, PCT received its first electronically filed application.

Marks

The number of international trademark registrations recorded under the Madrid System in 2002 reached 22,236. This represents a decrease of 7.2 per cent from the previous year, which can be ascribed to the global economic slowdown. Over the course of the year, membership of the Madrid Protocol rose to 56, bringing the total membership of the Madrid Union to 70.

Industrial designs

Under the Hague System, the number of international deposits recorded in 2002 amounted to 4,177 and remained stable compared to the preceding year. Since January 2002, users benefit from a reduction in registration fees resulting from a simplified method of calculating the publication fees and streamlining of the requirements for the presentation of reproductions, as agreed by the Hague Union Assembly.

The membership of the Hague System rose by one to reach a total of 30, and four new instruments of ratification or accession to the 1999 Geneva Act of the Hague Agreement were deposited, totalling seven such instruments deposited. This new Act would enter into force when ratified or acceded to by six countries, of which at least three must have a certain level of activity in the field of industrial design protection.

Appellations of origin

A major revision of the Regulations under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration entered into force in 2002, which simplify and clarify procedures, making the system more user-friendly and transparent.

(e) Intellectual property and global issues

Genetic resources, traditional knowledge and folklore

Two sessions of the Intergovernmental Committee on Intellectual Property and Genetic Resources: Traditional Knowledge and Folklore

(IGC) were held in 2002. The work of IGC is multifaceted, drawing together in one forum empirical surveys, policy debate, reports of national experience, exchange of experiences of local and indigenous communities, analysis of policy options and legal systems, the crafting of specific practical tools and discussion and coordination of capacity-building needs and initiatives in relation to intellectual property and genetic resources, traditional knowledge (TK) and traditional cultural expressions (TCEs).

A major input was also provided to the development of a regional model for protection of TK and TCEs for Pacific island countries.

Throughout the year, an important number of meetings and workshops were organized to promote the understanding and use of intellectual property by holders of TK and folklore and other stakeholders.

Small and medium-sized enterprises (SMEs) and intellectual property

Activities focused on the development of an extensive international network of partners to help deliver the message of the crucial role played by the intellectual property system in enhancing the competitiveness of SMEs in all sectors of the economy. This network included institutions providing support and finance to SMEs worldwide, other United Nations agencies, national SME focal points, intellectual property offices and copyright administrations in Member States.

Throughout the year, the user-friendly and interactive content of the WIPO SMEs website was regularly enhanced and the monthly average number of hits increased considerably, as did the subscribers to the free monthly e-newsletter.

Intellectual property enforcement issues

A single Advisory Committee on Enforcement was established, in charge of global enforcement issues, with the emphasis on coordination with certain organizations and the private sector to combat counterfeiting and piracy, public education, technical assistance and exchange of information. In October 2002, the Enforcement and Special Projects Division was established to serve as the focal point for enforcement activities within WIPO.

Furthermore, the Secretariat made arrangements for the development and launching of an Electronic Forum on Intellectual Property Enforcement Issues and Strategies.

Electronic commerce: Internet domain names

In December 2002, WIPO published a report entitled "Intellectual Property on the Internet: A Survey of Issues" that addressed the far-reaching impact that digital technologies, the Internet in particular, have had on intellectual property and the international intellectual property system.

With respect to the protection of intellectual property in the Domain Name System (DNS), important results were achieved in the form of a decision by WIPO Member States on the recommendations of the Special Sessions of SCT regarding the report of the Second Internet Domain Name Process. Through this decision, WIPO Member States recommended that the names and acronyms of intergovernmental organizations and country names should also be protected against abusive registration as domain names.

The WIPO Arbitration and Mediation Centre

In 2002, the Arbitration and Mediation Centre expanded its position as the pre-eminent provider of services for domain name and other intellectual property issues. The Centre received 15,086 domain name cases in the year. The exceptionally high number of cases filed in 2002 was due in large part to the introduction of a number of new top-level domains (TLDs), such as .info and .biz. Another highlight of 2002 was the Centre's creation of an online legal index on WIPO domain name panel decisions.

Online services

The Organization continued to expand its online presence, using the latest information technology to reach the widest possible audience worldwide. WIPO launched a Chinese version of its website; users could now access extensive intellectual property resource material in the six official languages of the United Nations, namely Arabic, Chinese, English, French, Russian and Spanish.

New members and new accessions

Among the significant developments in 2002 were the entry into force of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), on 6 March and 20 May 2002, respectively, in both cases three months after the deposit of the thirtieth instrument of accession.

In 2002, WIPO received and processed 54 instruments of ratification and accession to WIPO-administered treaties. The following figures show the new adherences to treaties, with the second figure in brackets being the total number of States party to the corresponding treaty by the end of 2002:

- Convention Establishing the World Intellectual Property Organization: 1 (179)
- Paris Convention for the Protection of Industrial Property: 2 (164)
- Berne Convention for the Protection of Literary and Artistic Works: 1 (149)
- Patent Cooperation Treaty: 3 (118)
- Trademark Law Treaty: 5 (31)

- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: 1 (56)
- Patent Law Treaty: 4 (5)
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks: 2 (70)
- Locarno Agreement Establishing an International Classification for Industrial Designs: 1 (41)
- Strasbourg Agreement Concerning the International Patent Classification: 2 (53)
- WIPO Copyright Treaty (WCT): 9 (39)
- WIPO Performances and Phonograms Treaty: 11 (39)
- Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure: 2 (55)
- Geneva Convention for the Protection of Procedures of Phonograms Against Unauthorized Duplication of their Phonograms: 2 (69)
- Geneva Act of the Hague Agreement: 4 (7)

9. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(a) Agreements with Governments

UNIDO concluded the following agreements and memorandums of understanding with Governments:

(a) Memorandum of Understanding between the United Nations Industrial Development Organization and the Secretariat for Trade and International Economic Relations of the Argentine Republic, signed on 2 August 2002;

(b) Agreement between the United Nations Industrial Development Organization and the Government of Arab Republic of Egypt regarding the establishment of a UNIDO regional office in Egypt, signed on 19 November 2002;

(c) Basic cooperation agreement between the United Nations Industrial Development Organization and the Government of the Republic of Guatemala, signed on 11 October 2002;

(d) Cooperative agreement between the United Nations Industrial Development Organization and the Republic of Peru, signed on 25 March 2002;

(e) Memorandum of Understanding between the United Nations Industrial Development Organization and the Republics of Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama), signed on 1 October 2002;

(f) Protocol on the framework cooperation programme between the United Nations Industrial Development Organization and the Russian Federation for the period 2002-2005, signed on 14 October 2002;

(g) Protocol on cooperation between the Government of Ukraine and the United Nations Industrial Development Organization, signed on 10 September 2002.

(b) Agreements with other intergovernmental, governmental, non-governmental and other organizations and entities

UNIDO concluded the following agreements with other organizations and entities:

(a) Memorandum of Understanding between the United Nations Industrial Development Organization and the University of Bologna, signed on 24 May 2002;

(b) Renewal of Memorandum of Understanding between the United Nations Industrial Development Organization and The Chancellor, Masters and Scholars of the University of Oxford, signed on 24 May and 10 June 2002;

(c) Memorandum of Understanding between the United Nations Industrial Development Organization and the Volunteers Association for International Service, signed on 11 October 2002;

(d) Memorandum of Understanding on collaboration between the United Nations Industrial Development Organization, the World Wide Fund for Nature—Denmark, and Huset Mandag Morgen regarding the Nordic Partnership, signed on 21 May and 10 June 2002.

10. INTERNATIONAL ATOMIC ENERGY AGENCY

(a) Legal instruments

*Convention on the Physical Protection of Nuclear Material*¹⁹⁴

In 2002, Albania, Bolivia, Ghana, Grenada, Iceland, India, Israel, Kenya, Latvia, Mali, Morocco and Namibia adhered to the Convention. At the end of the year, there were 81 parties.

*Convention on Early Notification of a Nuclear Accident*¹⁹⁵

In 2002, the status of the Convention remained unchanged with 87 parties.

*Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*¹⁹⁶

In 2002, Canada adhered to the Convention. At the end of the year, there were 84 parties.

*Vienna Convention on Civil Liability for Nuclear Damage, 1963*¹⁹⁷

In 2002, the Convention ceased to apply to Slovenia, whose notification of termination of application of the Convention was received in 2001. At the end of the year, there were 32 parties.

*Optional Protocol Concerning the Compulsory Settlement of Disputes*¹⁹⁸

In 2002, the status of the Protocol remained unchanged, with 2 parties.

*Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention*¹⁹⁹

In 2002, the status of the Protocol remained unchanged, with 24 parties.

*Convention on Nuclear Safety*²⁰⁰

In 2002, Indonesia adhered to the Convention. At the end of the year, there were 54 parties.

*Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*²⁰¹

In 2002, Belarus, Belgium and the Republic of Korea adhered to the Convention. At the end of the year, there were 30 parties.

*Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage*²⁰²

In 2002, the status of the Protocol remained unchanged, with 4 Contracting States and 15 signatories.

*Convention on Supplementary Compensation for Nuclear Damage*²⁰³

In 2002, the status of the Convention remained unchanged, with 3 Contracting States and 13 signatories.

*African Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology*²⁰⁴ (AFRA)—
(Second Extension)

In 2002, Gabon, Mali and Niger adhered to the Agreement. At the end of the year, there were 25 parties.

*Third Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology*²⁰⁵ (RCA)

In 2002, Bangladesh, China, India, Indonesia, Japan, the Republic of Korea, Malaysia, Mongolia, Myanmar, Pakistan, the Philippines, Sri Lanka and Viet Nam adhered to the Agreement. At the end of the year, there were 13 parties. Pursuant to article 1 of the Third Agreement to Extend the 1987 RCA, the 1987 Regional Cooperative Agreement “shall continue in force for a further period of five years with effect from 12 June 2002”, i.e. through 11 June 2007.

*Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean*²⁰⁶ (ARCAL)

In 2002, Haiti signed the Agreement and Cuba, Panama and Venezuela adhered to it. At the end of the year, there were 8 Contracting States and 18 signatories.

*Cooperation Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology*²⁰⁷ (ARASIA)

In 2002, Jordan, Lebanon, the Syrian Arab Republic, the United Arab Emirates and Yemen adhered to the Agreement. At the end of the year there were 5 parties to the Agreement. The Agreement, pursuant to article XII, entered into force upon receipt by the Director General of the Agency of notification of acceptance by three Arab Member States of the Agency in Asia, in accordance with article XI, i.e. on 29 July 2002.

Revised Supplementary Agreement Concerning the Provision of Technical Assistance by IAEA (RSA)

In 2002, the status of the Agreement remained the same, with 95 States that had concluded the RSA Agreement.

(b) IAEA legislative assistance activities

As part of its technical cooperation programme for 2002-2003, IAEA provided legislative assistance to a number of Member States from various regions through both bilateral meetings and regional workshops. Legislative assistance was given to 10 countries by means of written comments or advice on specific national legislation submitted to the Agency for review. Also, at the request of 14 Member States, individual training on issues related to nuclear legislation was also provided.

In addition, IAEA's legislative assistance activities in 2002 included:

- A regional workshop on the development of national legislation to fulfil States' obligations under the Additional Protocol for the Baltic countries was held in Tallinn from 9 to 11 January 2002;

- A regional workshop for French-speaking countries of the African Region on the establishment of a legal framework governing radiation protection, the safety of radiation sources and the safe management of radioactive waste was held at IAEA headquarters in Vienna from 29 April to 3 May 2002;
- A regional workshop for English-speaking countries of the African Region for the development of a legal framework governing the safety of radioactive waste management and the safe transport of radioactive material was held in Accra from 14 to 18 October 2002;
- A regional workshop for the Latin American Region for the development of a legal framework governing the safety of radiation waste management, physical protection of nuclear material and the safe transport of radioactive material was held in Buenos Aires from 25 to 29 November 2002.

(c) Other activities

Convention on Nuclear Safety

The Second Review Meeting pursuant to article 20 of the Convention was held at the headquarters of IAEA, being the Secretariat under the Convention, from 15 to 26 April 2002. Forty-six Contracting Parties participated. Indonesia, having ratified the Convention on 12 April 2002, could not participate as a full Contracting Party at this Review Meeting. However, in accordance with section IV of the Guidelines regarding the Review Process, Indonesia was invited to attend the final plenary session of the Review Meeting.

Safeguards Agreements

During 2002, four Safeguards Agreements pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) with Kuwait,²⁰⁸ Mali,²⁰⁹ the former Yugoslav Republic of Macedonia²¹⁰ and Yemen²¹¹ entered into force. A Safeguards Agreement pursuant to NPT was signed with the United Arab Emirates, and an NPT Safeguards Agreement with Tajikistan was approved by the IAEA Board of Governors. These Agreements have not yet entered into force.

Through an exchange of letters between Albania and the Agency, it was confirmed that the Comprehensive Safeguards Agreement concluded between Albania and IAEA satisfied the obligation of Albania under article III of NPT.

Protocols Additional to the Safeguards Agreement between IAEA and the People's Republic of China,²¹² the Czech Republic,²¹³ Mali²¹⁴ and South Africa²¹⁵ entered into force. Protocols Additional to the Safeguards Agreement with IAEA were signed by Chile, Haiti, Kuwait, Nicaragua and South Africa but have not entered into force. The IAEA Board of Gover-

nors approved Protocols Additional to the Safeguards Agreement for the Democratic Republic of the Congo, El Salvador, Jamaica, Kiribati, Malta, Paraguay and Tajikistan.

At the end of 2002, there were 229 Safeguards Agreements in force with 145 States (and Taiwan, Province of China). Safeguards Agreements that satisfy the requirements of NPT were in force with 135 States. At the end of 2002, 74 States had signed an Additional Protocol. Of the 74, 28 had entered into force.

11. WORLD TRADE ORGANIZATION

(a) Director-General

The Director-General of the World Trade Organization (WTO) was Dr. Supachai Panitchpakdi of Thailand. His term was to run 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. The following is a list of the 29 Governments for which a WTO working party has been established (current as of 31 December 2002): Algeria, Andorra, Armenia, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, Cape Verde, Ethiopia, Kazakhstan, Lao People's Democratic Republic, Lebanon, Nepal, Russian Federation, Samoa, Saudi Arabia, Serbia and Montenegro, Seychelles, Sudan, Tajikistan, the former Yugoslav Republic of Macedonia, Tonga, Ukraine, Uzbekistan, Vanuatu, Viet Nam and Yemen.

As of 31 December 2002, there were 144 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 of WTO relative to its predecessor, the General Agreement on Tariffs and Trade (GATT).

During 2002, WTO received the following new member: Taiwan, Province of China (also known as Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu), by Protocol of Accession (11 November 2001, WT/L/433). Taiwan, Province of China, became the 144th member of WTO 30 days after WTO received notification of the ratification of the agreement by the parliament of Taiwan, Province of China.

The list of WTO members as at 31 December 2002 is contained in the table below.

WTO MEMBERS (AS AT 31 DECEMBER 2002)

Albania	Georgia	Nigeria
Angola	Germany	Norway
Antigua and Barbuda	Ghana	Oman
Argentina	Greece	Paraguay
Australia	Grenada	Peru
Austria	Guatemala	Philippines
Bahrain	Guinea	Poland
Bangladesh	Guinea-Bissau	Portugal
Barbados	Guyana	Qatar
Belgium	Haiti	Republic of Korea
Belize	Honduras	Republic of Moldova
Benin	Hong Kong, China	Romania
Bolivia	Hungary	Rwanda
Botswana	Iceland	Saint Kitts and Nevis
Brazil	India	Saint Lucia
Brunei Darussalam	Indonesia	Saint Vincent and the Grenadines
Bulgaria	Ireland	Senegal
Burkina Faso	Israel	Sierra Leone
Burundi	Italy	Singapore
Cameroon	Jamaica	Slovakia
Canada	Japan	Slovenia
Central African Republic	Jordan	Solomon Islands
Chad	Kenya	South Africa
Chile	Kuwait	Spain
China	Kyrgyzstan	Sri Lanka
Colombia	Latvia	Suriname
Congo	Lesotho	Swaziland
Costa Rica	Liechtenstein	Sweden
Côte d'Ivoire	Lithuania	Switzerland
Croatia	Luxembourg	Taiwan, Province of China
Cuba	Macao, China	Thailand
Cyprus	Madagascar	Togo
Czech Republic	Malawi	Trinidad and Tobago
Democratic Republic of the Congo	Malaysia	Tunisia
Denmark	Maldives	Turkey
Djibouti	Mali	Uganda
Dominica	Malta	United Arab Emirates
Dominican Republic	Mauritania	United Kingdom of Great Britain and Northern Ireland
Ecuador	Mauritius	United Republic of Tanzania
Egypt	Mexico	United States of America
El Salvador	Mongolia	Uruguay
Estonia	Morocco	Venezuela
European Communities	Mozambique	Zambia
Fiji	Myanmar	Zimbabwe
Finland	Namibia	
France	Netherlands	
Gabon	New Zealand	
Gambia	Nicaragua	
	Niger	

(c) Waivers

In 2002, the Ministerial Conference/General Council granted a number of waivers from obligations under the WTO Agreements. These are listed in the table below.

WAIVERS UNDER ARTICLE IX OF THE WTO AGREEMENT

<i>Member</i>	<i>Type</i>	<i>Decision of</i>	<i>Expiry</i>	<i>Document</i>
Argentina, Australia, Bulgaria, Canada, China, Colombia, Croatia, Czech Republic, Estonia, European Communities, Hungary, Iceland, India, Latvia, Lithuania, Malaysia, Mexico, New Zealand, Norway, Republic of Korea, Romania, Singapore, Slovakia, Slovenia, Switzerland, Thailand, Turkey, United States, Uruguay and Hong Kong, China	Introduction of Harmonized System 2002 changes into WTO Schedules of Tariff Concessions	13 May 2002	1 year	WT/L/469
Nicaragua	Establishment of a new Schedule XXIX	13 May 2002	31 October 2002	WT/L/467
Sri Lanka	Establishment of a new Schedule VI	13 May 2002	31 October 2002 15 October 2003	WT/L/468
Malaysia	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	13 May 2002	30 April 2003	WT/L/465
Pakistan	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	13 May 2002	30 April 2003	WT/L/466

<i>Member</i>	<i>Type</i>	<i>Decision of</i>	<i>Expiry</i>	<i>Document</i>
Panama	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	13 May 2002	30 April 2003	WT/L/458
Paraguay	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	13 May 2002	30 April 2003	WT/L/461
El Salvador	Agreement on the Implementation of Article VII of GATT 1994	8 July 2002	7 March 2003 7 March 2005	WT/L/476
Côte d'Ivoire	Minimum Values under the Customs Valuation Agreement	8 July 2002	1 January 2003	WT/L/475
Romania	Introduction of the Harmonized System 2002 changes into WTO Schedules of Tariff Concessions	8 July 2002	1 January 2003	WT/L/477
Least developed countries	Article 70.9 of the TRIPS Agreement with Respect to Pharmaceutical Products	8 July 2002	1 January 2016	WT/L/478
Argentina	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	15 October 2002	30 April 2003	WT/L/485

<i>Member</i>	<i>Type</i>	<i>Decision of</i>	<i>Expiry</i>	<i>Document</i>
El Salvador	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	15 October 2002	30 April 2003	WT/L/486
Israel	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	15 October 2002	30 April 2003	WT/L/487
Morocco	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	15 October 2002	30 April 2003	WT/L/488
Norway	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	15 October 2002	30 April 2003	WT/L/489
Thailand	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	15 October 2002	30 April 2003	WT/L/490
Venezuela	Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	15 October 2002	30 April 2003	WT/L/491

<i>Member</i>	<i>Type</i>	<i>Decision of</i>	<i>Expiry</i>	<i>Document</i>
Zambia	Renegotiation of Schedule LXXVIII	15 October 2002	30 April 2003	WT/L/493
Argentina, Australia, Bulgaria, Canada, China, Croatia, Czech Republic, Estonia, European Communities, Hungary, Iceland, India, Latvia, Lithuania, Mexico, Nicaragua, Norway, Republic of Korea, Romania, Singapore, Slovakia, Slovenia, Switzerland, Thailand, United States, Uruguay, Hong Kong, China, and Macao, China	Introduction of the Harmonized System 2002 changes into WTO Schedules of Tariff Concessions	12 December 2002	31 December 2003	WT/L/511

(d) Resolution of trade conflicts under the WTO dispute settlement understanding (DSU)

Overview

The General Council convenes as the Dispute Settlement Body (DSB) 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 (DSU). The DSB, which met 23 times during 2002, 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.

Composition of the Appellate Body

The serving members of the Appellate Body in 2002 were Luiz Olavo Baptista (Brazil), John S. Lockhart (Australia), Giorgio Sacerdoti (European Communities), J. Bacchus (United States), G. M. Abi-Saab (Egypt), A. V. Ganesan (India) and Y. Taniguchi (Japan).

Dispute settlement activity for 2002

In 2002, DSB received 37 notifications from WTO members of formal requests for consultations under DSU. During this period, DSB established

panels to deal with 11 new cases and adopted Appellate Body and/or panel reports in 12 cases, concerning 11 distinct matters. In addition, mutually agreed solutions were notified in four cases. One panel suspended its work at the request of the parties; this panel was withdrawn by the complaining party following abrogation of the contested measure.

This section briefly describes the procedural history and, where available, the substantive outcome of the cases. It also describes the implementation status of adopted reports where new developments occurred in the covered period; cases in which a panel report had been circulated but where an appeal was pending before the Appellate Body; and cases for which panel reports were issued but not yet adopted or appealed.

Appellate Body and/or panel reports adopted

INDIA—*Measures affecting the automotive sector, complaints by the European Communities and the United States (WT/DS146/R and WT/DS175/R)*. This dispute concerns certain measures affecting the automotive sector being applied by India. The European Communities contended that under these measures, imports of complete automobiles and of certain parts and components were subject to a system of non-automatic import licences; that, in accordance with Public Notice No. 60, issued by the Indian Government, import licences might be granted only to local joint venture manufacturers that had signed a Memorandum of Understanding (MoU) with the Government of India, whereby they undertook, inter alia, to comply with certain local content and export balancing requirements; and moreover that the measures violated articles III and XI of GATT 1994 and article 2 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement).

On 15 May 2000, the United States requested the establishment of a panel. DSB established a panel at its meeting on 27 July 2000 (WT/DS175). The European Communities, Japan and the Republic of Korea reserved their third-party rights. On 12 October 2000, the European Communities also requested the establishment of a panel. DSB established a panel at its meeting of 17 November 2000 (WT/DS146). Pursuant to article 9.1 of DSU, DSB decided that this complaint would be examined by the same panel as that established at the request of the United States. Japan and the Republic of Korea reserved their third-party rights.

The Panel concluded that India had acted inconsistently with its obligations under articles III:4 and XI of GATT 1994. On 21 December 2001, the Panel circulated its report to the members. On 31 January 2002, India appealed the Panel report. In particular, India sought review of the following Panel conclusions on the grounds that they were in error and based upon the erroneous findings on issues of law and related legal instruments: (i) articles II and 19.1 of DSU required the Panel to address the question of whether the measures found to be inconsistent with articles III:4 and

XI:1 of GATT had been brought into conformity with GATT as a result of measures taken by India during the course of the proceedings; and (ii) the enforcement of the export obligations that automobile manufacturers incurred until 1 April 2001 under India's former import licensing scheme was inconsistent with articles III:4 and XI:1 of GATT. On 14 March 2002, India withdrew its appeal. Further to India's withdrawal of its appeal, the Appellate Body issued a short report outlining the procedural history of the case. At the DSB meeting on 5 April 2002, DSB adopted Appellate Body and Panel reports.

UNITED STATES—*Section 211 of the Omnibus Appropriations Act, complaint by the European Communities (WT/DS176)*. This dispute concerns section 211 of the United States Omnibus Appropriations Act, which was signed into law on 21 October 1998 (sect. 211). Section 211 regulates trademarks, trade names and commercial names that are the same as, or substantially similar to, trademarks, trade names or commercial names that were used in connection with businesses or assets that were confiscated by the Government of Cuba on or after 1 January 1959. Section 211 (a) (1) prevents the registration and renewal of such trademarks, trade names or commercial names; section 211 (a) (2) prevents United States courts from recognizing, enforcing or validating any rights asserted by Cuba or a Cuban national or its successor-in-interest in respect of such trademarks, trade names or commercial names; and section 211 (b) prevents the United States courts from recognizing, enforcing or validating any treaty rights asserted by Cuba or a Cuban national or its successor-in-interest in respect of such trademarks, trade names or commercial names.

Before the Panel, the European Communities argued that section 211 was inconsistent with articles 2.1, 3.1, 4, 15.1, 16.1 and 42 of the TRIPS Agreement, as read with the relevant provisions of the Paris Convention (1967), which is incorporated into the TRIPS Agreement. On 30 June 2000, the European Communities and its member States requested the establishment of a panel. At its meeting on 26 September 2000, DSB established a panel. Canada, Japan and Nicaragua reserved their third-party rights.

The Panel circulated its report on 6 August 2001. The Panel rejected most of the claims by the European Communities and their member States except that relating to the inconsistency of section 211 (a) (2) of the Omnibus Appropriations Act with article 42 of the TRIPS Agreement. In this regard, the Panel concluded that this section was inconsistent with the relevant TRIPS article on the grounds that it limited, under certain circumstances, right holders' effective access to, and availability of, civil judicial procedures.

On 4 October 2001, the European Communities and its member States notified their decision to appeal certain issues of law and legal interpretations developed by the Panel report. The Appellate Body report was circulated to members on 12 January 2002. The Appellate Body: (i) found, in

respect of the protection of trademarks, that sections 211 (a) (2) and (b) of the Omnibus Appropriations Act violated the national treatment and most-favoured-nation obligations under the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property, thereby reversing the Panel's findings to the contrary; (ii) reversed the Panel's finding that section 211 (a) (2) was inconsistent with article 42 of the TRIPS Agreement and concluded that article 42 contained procedural obligations, while section 211 affected substantive trademark rights; (iii) upheld the Panel's findings that section 211 did not violate the obligations of the United States under article 2.1 of the TRIPS Agreement in conjunction with article 6 quinquiesA(1) of the Paris Convention, and articles 15 and 16 of the TRIPS Agreement. It also upheld the Panel's finding under article 42 of the TRIPS Agreement in respect of section 211 (b); and (iv) reversed the Panel's conclusion that trade names were not a category of intellectual property protected under the TRIPS Agreement and then completed the analysis, reaching the same conclusions for trade names as with respect to trademarks. It also found that sections 211 (a) (2) and (b) were not inconsistent with article 2.1 of the TRIPS Agreement in conjunction with article 8 of the Paris Convention (1967). DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on 1 February 2002.

UNITED STATES—*Definitive safeguard measures on imports of circular welded carbon quality line pipe, complaint by the Republic of Korea (WT/DS202)*. This dispute concerns the United States imposition of a definitive safeguard measure on imports of circular welded carbon quality line pipe. On 13 June 2000, the Republic of Korea requested consultations with the United States in respect of concerns regarding the definitive safeguard measure imposed by the United States on imports of circular welded carbon quality line pipe (line pipe). Korea noted that on 18 February 2000 the United States had proclaimed a definitive safeguard measure on imports of line pipe (subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States). In that proclamation, the United States announced that the proposed date of introduction of the measure was 1 March 2000 and that the measure was expected to remain in effect for three years and one day. Korea considered that the United States procedures and determinations that led to the imposition of the safeguard measure as well as the measure itself contravened various provisions contained in the Safeguards Agreement and GATT 1994. In particular, Korea considered that the measure was inconsistent with United States obligations under articles 2, 3, 4, 5, 11 and 12 of the Safeguards Agreement, and articles I, XIII and XIX of GATT 1994. Further to Korea's request, DSB established a panel at its meeting of 23 October 2000. Australia, Canada, the European Communities, Japan and Mexico reserved their third-party rights.

The Panel found that the United States had imposed its safeguard measure inconsistently with GATT 1994 and the Agreement on Safe-

guards. On 29 October 2001, the Panel circulated its report to the members. On 6 November 2001, the United States notified its decision to appeal certain findings of law and legal interpretations contained in the Panel report. However, on 13 November 2001, it withdrew its notice of appeal. Later, on 19 November 2001, the United States notified its decision to refile its appeal to the Appellate Body. The Appellate Body report was circulated to members on 15 February 2002.

The Appellate Body upheld, albeit for different reasons, the Panel's finding, in paragraph 8.1(7) of the Panel report, that the United States had acted inconsistently with its obligation under article 12.3 of the Agreement on Safeguards by failing to provide an adequate opportunity for prior consultations with Korea, Korea being a member having a substantial interest in exports of line pipe, and with its obligation under article 8.1 of the Agreement on Safeguards to endeavour to maintain a substantially equivalent level of concessions and other obligations. In addition, the Appellate Body upheld the Panel's finding, in paragraph 8.1(5) of the Panel report, that the United States did not comply with its obligation under article 9.1 of the Agreement on Safeguards that safeguard measures shall not be applied against a product originating in a developing country member as long as its imports do not exceed the individual and collective thresholds in that provision. However, the Appellate Body reversed the Panel's finding that the United States had acted inconsistently with its obligations under articles 3.1 and 4.2 (c) of the Agreement on Safeguards by failing to include in its published report a discrete finding that increased imports had caused serious injury, or that increased imports were threatening to cause serious injury. It also reversed the Panel's findings that the United States was entitled to exclude Canada and Mexico from the scope of the safeguard measure and that Korea had failed to make a prima facie case that the United States had applied the safeguard measure beyond the maximum extent permitted under article 5.1 of the Agreement on Safeguards. On 8 March 2002, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

UNITED STATES—*Anti-dumping and countervailing measures on steel plate from India, complaint by India (WT/DS206)*. This dispute concerns the imposition by the United States of anti-dumping measures on certain cut-to-length carbon steel plate (steel plate) from India. India argued that these determinations were erroneous and based on deficient procedures contained in various provisions of United States anti-dumping and countervailing duty law. According to India, these determinations and provisions raised questions concerning the obligations of the United States under GATT 1994, the Anti-Dumping Agreement, the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and the Agreement establishing WTO (WTO Agreement). DSB established a Panel at its meeting of 24 July 2001. Chile, the European Communities and Japan reserved their third-party rights.

On 28 June 2002, the Panel circulated its report to members. The Panel concluded that the United States statutory provisions governing the use of facts available, sections 776 (a) and 782 (d) and (e) of the Tariff Act of 1930, as amended, were not inconsistent with articles 6.8 and paragraphs 3, 5 and 7 of annex II to the Anti-Dumping Agreement. The Panel also concluded that the United States had not acted inconsistently with article 15 of the Anti-Dumping Agreement with respect to India in the anti-dumping investigation underlying this dispute. The Panel also concluded that the “practice” of the United States Department of Commerce concerning the application of “total facts available” was not a measure which could give rise to an independent claim of violation of the Anti-Dumping Agreement, and therefore did not rule on India’s claim in this regard. However, the Panel found that the United States Department of Commerce’s reliance on “facts available” in the investigation underlying the measure in question was inconsistent with article 6.8 and paragraph 3 of annex II to the Anti-Dumping Agreement. At its meeting on 29 July 2002, DSB adopted the Panel report.

CHILE—Price Band System and safeguard measures relating to certain agricultural products, complaint by Argentina (WT/DS207). This dispute concerns two distinct matters: Argentina had claimed that: (a) Chile’s Price Band System (PBS) applicable to imports of wheat, wheat flour and edible vegetable oils was inconsistent with article II:1 (b) of GATT 1994 and article 4.2 of the Agreement on Agriculture; and (b) Chile’s provisional and definitive safeguards measures on imports of wheat, wheat flour and edible vegetable oils, as well as the extension of those measures, were inconsistent with article XIX of GATT 1994 and articles 2, 3, 4, 5, 6 and 12 of the Agreement on Safeguards. At its meeting of 12 March 2001, DSB established a panel. Australia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, the European Communities, Guatemala, Honduras, Japan, Nicaragua, Paraguay, the United States and Venezuela reserved their third-party rights.

The Panel found that Chile’s PBS was a measure “of the kind of which ha[d] been required to be converted into ordinary customs duties”, within the meaning of article 4.2 of the Agreement on Agriculture. Specifically, the Panel found that Chile’s PBS was a measure similar to a variable import levy and a minimum import price. The Panel found that, by maintaining a measure which should have been converted, Chile had acted inconsistently with article 4.2 of the Agreement on Agriculture. Since it had found that Chile’s PBS was a border measure other than an “ordinary customs duty”, the Panel concluded that the consistency of PBS with article II:1 (b) of GATT 1994 could not be assessed under the first sentence of that provision, because that sentence applied only to “ordinary customs duties”. The Panel considered that the duties resulting from Chile’s PBS (“PBS duties”) were “other duties and charges of any kind”, thus falling under the second sentence of article II:1 (b). According to that provision, such “other duties

or charges” must not exceed the bindings recorded in the respective column of a member’s schedule. Because the PBS duties were not recorded in Chile’s schedule, but were nevertheless levied, the Panel found that, in the light of the Understanding on the Interpretation of Article II:1 (b) of GATT 1994, Chile had acted inconsistently with the second sentence of article II:1 (b). The report was circulated on 3 May 2002. On 24 June 2002, Chile notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel.

On 23 September 2002, the report of the Appellate Body was circulated to WTO members. As a procedural matter, the Appellate Body found that the Panel had acted inconsistently with article 11 of DSU in finding that the PBS duties were inconsistent with the second sentence of article II:1 (b) of GATT 1994, an issue that was not before the Panel; it therefore reversed that finding. With respect to article 4.2 of the Agreement on Agriculture, the Appellate Body: (i) upheld the Panel’s finding that Chile’s PBS was a border measure that was similar to a variable import levy and a minimum import price; and (ii) upheld the Panel’s finding that Chile’s PBS was inconsistent with article 4.2. The Appellate Body, however, reversed the Panel’s finding that the term “ordinary customs duties”, as used in article 4.2 of the Agreement on Agriculture, was to be understood as “referring to a customs duty which [was] not applied on the basis of factors of an exogenous nature”, i.e. not based exclusively on the value of a product in the case of ad valorem duties or the volume of a product in the case of specific duties. Having found that Chile’s PBS was inconsistent with article 4.2 of the Agreement on Agriculture, the Appellate Body did not find it necessary to rule on whether that system was consistent with the first sentence of article II:1 (b) of GATT 1994. At its meeting on 23 October 2002, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

EGYPT—*Definitive anti-dumping measures on steel rebar from Turkey, complaint by Turkey (WT/DS211)*. This dispute concerns the imposition by Egypt of anti-dumping measures on steel rebar from Turkey. Turkey considered that Egypt had made determinations of injury and dumping investigation without a proper establishment of the facts and based on an evaluation of the facts that was neither unbiased nor objective; furthermore, during the investigation of material injury or threat thereof and the causal link, Egypt had acted inconsistently with articles 3.1, 3.2, 3.4, 3.5, 6.1 and 6.2 of the Anti-Dumping Agreement; and also, during the investigation of sales at less than normal value, Egypt had violated article X:3 of GATT 1994, as well as articles 2.2, 2.4, 6.1, 6.2, 6.6, 6.7 and 6.8, and paragraphs 1, 3, 5, 6 and 7 of annex II, and paragraph 7 of annex I to the Anti-Dumping Agreement. At its meeting of 20 June 2001, DSB established a panel. Chile, the European Communities, Japan and the United States reserved their third-party rights.

On 8 August 2002, the Panel report was circulated to WTO members. The Panel concluded that Egypt had acted inconsistently with its obligations under: (a) article 3.4 of the Anti-Dumping Agreement, in that while it had gathered data on all of the factors listed in article 3.4, the Egyptian investigating authority failed to evaluate all of the factors listed in article 3.4 as it did not evaluate productivity, actual and potential negative effects on cash flow, employment, wages, and ability to raise capital or investments; and (b) article 6.8 of the Anti-Dumping Agreement, and paragraph 6 of annex II thereto, with regard to two of the Turkish exporters, as the Egyptian investigating authority, having received the information that it had identified to these two respondents as being necessary, nevertheless found that they had failed to provide the necessary information and, further, did not inform these two exporters of this finding and did not give them the required opportunity to provide further explanations before resorting to facts available. On 1 October 2002, DSB adopted the Panel report.

UNITED STATES—*Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany, complaint by the European Communities (WT/DS213)*. This dispute concerns the obligations that article 21.3 of the SCM Agreement imposes on members in their conduct of five-year, or “sunset”, reviews of countervailing duties. The European Communities claimed that certain United States laws and practices regarding sunset reviews, as well as their application in a sunset review of countervailing duties on certain carbon steel products from Germany, were inconsistent with the obligations of the United States under the SCM Agreement and the WTO Agreement. In particular, the European Communities challenged: the failure of the United States to apply in sunset reviews the same 1 per cent *de minimis* standard that must be applied in original countervailing duty investigations, and the automatic self-initiation of sunset reviews by United States authorities in each and every case. Further, the European Communities claimed that United States law precludes the domestic authorities from making a determination in a sunset review consistent with the requirements of article 21.3. A panel was established by DSB on 10 September 2001 further to the request of the European Communities. Japan and Norway reserved their third-party rights.

In its report circulated to members on 3 July 2002, the Panel made a number of rulings on the scope of its terms of reference. With respect to the substantive claims, the Panel found the automatic self-initiation of sunset reviews by domestic authorities to be consistent with the obligations of the United States under article 21.3 of the SCM Agreement. Regarding the determination to be made in sunset reviews, the Panel found that United States law, as such, applicable to such determinations was not inconsistent with article 21.3 of the SCM Agreement, but that the specific determination made in the sunset review of carbon steel products from Germany had violated the requirements of that provision. With respect to the *de minimis* issue, the Panel found that a 1 per cent *de minimis* standard was “implied”

in article 21.3 of the SCM Agreement. The Panel found, therefore, that by failing to apply such a standard, United States law, as such, and as applied in the sunset review of carbon steel products from Germany, was inconsistent with that provision. One member of the Panel issued a dissenting opinion on this issue, concluding instead that no *de minimis* standard applied in sunset reviews.

On 30 August 2002, the United States notified its decision to appeal certain issues of law covered in the Panel report. The United States appealed the Panel's findings regarding the *de minimis* standard in sunset reviews. The European Communities appealed the Panel's findings regarding the automatic self-initiation of sunset reviews, and regarding the consistency of United States law, as such, with obligations relating to the determination to be made in sunset reviews. The United States and the European Communities each appealed different aspects of the Panel's treatment of its terms of reference. However, the Panel's finding that the application of United States law in the sunset review of carbon steel products from Germany was inconsistent with article 21.3 of the SCM Agreement was not appealed.

In its report, circulated 28 November 2002, the Appellate Body reversed the Panel's findings relating to the *de minimis* standard in sunset reviews. The Appellate Body disagreed with the Panel that the *de minimis* standard that applied to original investigations pursuant to article 11.9 of the SCM Agreement must be "implied" in article 21.3 of that Agreement, the provision governing sunset reviews. The Appellate Body found no support for such implication in the text of the relevant provisions, read in their context and in the light of the object and purpose of the SCM Agreement. Having found that the *de minimis* standard of article 11.9 was not applicable in sunset reviews conducted under article 21.3, the Appellate Body reversed the Panel's findings that United States law, as such, and as applied in the sunset review of carbon steel products from Germany, was inconsistent with article 21.3 by virtue of its failure to apply a 1 per cent *de minimis* standard in sunset reviews. The Appellate Body upheld the Panel's findings that United States law, as such, and as applied in the sunset review of carbon steel products from Germany, was consistent with article 21.3 of the SCM Agreement with respect to the automatic self-initiation of sunset reviews. The Appellate Body agreed with the Panel that, when interpreted in accordance with customary rules of interpretation of public international law, article 21.3 of the SCM Agreement did not require WTO members to satisfy any particular evidentiary standard in order to self-initiate such reviews. The Appellate Body also upheld the Panel's finding with respect to the consistency of United States law, as such, with obligations regarding the determination to be made in a sunset review. The European Communities' appeal on this issue was, in large part, based upon an assertion that the Panel had failed to make an objective assessment of the matter, as required by article 11 of DSU. The Appellate Body, however, found that

the Panel had acted within the bounds of its discretion in its treatment of this issue and thus saw no reason to disturb the Panel's finding. Finally, the Appellate Body upheld, with respect to each of the appeals related to jurisdiction, the Panel's interpretation of its terms of reference. At its meeting of 19 December 2002, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

UNITED STATES—*Section 129 (c) (1) of the Uruguay Round Agreements Act, complaint by Canada (WT/DS221)*. This dispute concerns section 129 of the Uruguay Round Agreements Act which established a procedure by which the United States administration might obtain advice it required to determine its response to an adverse WTO panel or Appellate Body report (hereafter “WTO report”) concerning obligations of the United States under the Anti-Dumping Agreement or the SCM Agreement. Section 129 also established a mechanism that permitted the agencies concerned to issue a second determination (hereafter a “section 129 determination”), where such action was appropriate, to respond to the recommendations in a WTO panel or Appellate Body report. At issue in this dispute was the latter mechanism, specifically section 129 (c) (1). Canada claimed that section 129 (c) (1) had the effect of precluding the United States from implementing adverse WTO reports with respect to what it termed “prior unliquidated entries” (i.e. entries that had occurred before the end of the reasonable period of time for implementing adverse WTO reports, but remained unliquidated as of that date). At its meeting of 23 August 2001, DSB established a panel. Chile, the European Communities, India and Japan reserved their third-party rights. In its report circulated on 15 July 2002, the Panel found that section 129 (c) (1) only spoke to the treatment of unliquidated entries that occurred after the end of the reasonable period of time and was not convinced by Canada's assertion that section 129 (c) (1) nevertheless had the effect of precluding the United States from implementing adverse WTO reports with respect to “prior unliquidated entries”. Since Canada did not succeed in establishing that section 129 (c) (1) had such an effect, the Panel did not consider it necessary to examine whether Canada was correct in arguing that GATT 1994, the Anti-Dumping Agreement and the SCM Agreement required the United States to implement adverse WTO reports with respect to “prior unliquidated entries”. For these reasons, the Panel concluded that Canada had failed to establish that section 129 (c) (1) was inconsistent with GATT 1994, the Anti-Dumping Agreement or the SCM Agreement. Because Canada had failed to establish that section 129 (c) (1) was inconsistent with GATT 1994, the Anti-Dumping Agreement or the SCM Agreement, the Panel did not uphold Canada's additional claim under the WTO Agreement, namely that the United States had failed to ensure the conformity of its laws with its WTO obligations. At its meeting on 30 August 2002, DSB adopted the Panel report.

CANADA—*Export credits and loan guarantees for regional aircraft, complaint by Brazil (WT/DS222)*. This dispute concerns subsidies which

were allegedly being granted to Canada's regional aircraft industry. Brazil claimed that export credits, within the meaning of item (k) of annex I to the SCM Agreement, were being provided to Canada's regional aircraft industry by the Export Development Corporation (EDC) and the Canada Account; that loan guarantees, within the meaning of item (j) of annex I to the SCM Agreement, were being provided by EDC, Industry Canada and the Province of Quebec to support exports of Canada's regional aircraft industry. Brazil took the view that all of the above-mentioned measures were subsidies, within the meaning of article 1 of the SCM Agreement, since they were financial contributions that conferred a benefit. According to Brazil, they were also contingent, in law or in fact, upon export, and constituted, therefore, a violation of article 3 of the SCM Agreement.

On 28 January 2002, the Panel circulated its report to the members. The Panel rejected Brazil's claims that the EDC Corporate Account, Canada Account and Investissement Québec (IQ) programmes "as such" constituted prohibited export subsidies contrary to article 3.1 (a) of the SCM Agreement. They considered that it was not appropriate to make separate findings regarding the EDC Corporate Account, Canada Account and Investissement Québec programmes "as applied". Where claims relating to specific transactions were concerned, the Panel rejected Brazil's claim that the EDC Corporate Account financing to Kendell, Air Nostrum and Comair in December 1996, March 1997 and March 1998 constituted a prohibited export subsidy contrary to article 3.1 (a) of the SCM Agreement. In addition, the Panel rejected Brazil's claim that Investissement Québec equity guarantees to ACA, Air Littoral, Midway, Mesa Air Group, Air Nostrum and Air Wisconsin constituted prohibited export subsidies contrary to article 3.1 (a) of the SCM Agreement; and finally, they also rejected Brazil's claim that Investissement Québec loan guarantees to Mesa Air Group and Air Wisconsin constituted prohibited export subsidies contrary to article 3.1 (a) of the SCM Agreement.

The Panel upheld Brazil's claim that the EDC Canada Account financing to Air Wisconsin, to Air Nostrum and to Comair in July 1996, August 1997 and February 1999 constituted a prohibited export subsidy contrary to article 3.1 (a) of the SCM Agreement. The report of the Panel was circulated to WTO members on 28 January 2002, and was adopted by DSB at its meeting on 19 February 2002.

EUROPEAN COMMUNITIES—*Trade description of sardines, complaint by Peru (WT/DS231)*. This dispute concerns the European Communities Regulation (EEC) 2136/89 (the "EC Regulation") which, according to Peru, prevented Peruvian exporters from continuing to use the trade description "sardines" for their products. Peru submitted that, according to the relevant Codex Alimentarius standards (STAN 94-181 rev. 1995), the species *Sardinops sagax sagax* was listed among those species which can be traded as "sardines". Peru, therefore, considered that the EC Regulation constituted an unjustifiable barrier to

trade, and, hence, was in breach of articles 2 and 12 of the Agreement on Technical Barriers to Trade (TBT Agreement) and article XI:1 of GATT 1994. In addition, Peru argued that the Regulation was inconsistent with the principle of non-discrimination, and, hence, in breach of articles I and III of GATT 1994. A panel was established at the DSB meeting of 24 July 2001. Canada, Chile, Colombia, Ecuador, the United States and Venezuela reserved their third-party rights.

The Panel report was circulated to members on 29 May 2002. The Panel found that the EC Regulation was inconsistent with article 2.4 of the TBT Agreement. The Panel held that the European Communities, by not allowing Peruvian sardines to be marketed as “sardines” combined with the name of the country, the name of the geographical area, the name of the species or the common name of the species, did not use the relevant international standard, i.e. Codex Stan 94, as a basis for its technical regulation even though it would have been an effective or appropriate means to fulfil the legitimate objectives of consumer protection, market transparency and fair competition.

On 28 June 2002, the European Communities notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel. On 26 September 2002, the report of the Appellate Body was circulated. The Appellate Body upheld the Panel’s finding that the EC Regulation was inconsistent with article 2.4 of the TBT Agreement because the European Communities did not use the standard developed by the Codex Alimentarius, Codex Stan 94—a relevant international standard—as a basis for the EC Regulation. However, the Appellate Body reversed the Panel’s finding that the European Communities had the burden of proving that the relevant international standard was ineffective and inappropriate under article 2.4 and found, instead, that the burden rested on Peru to prove that the standard was effective and appropriate to fulfil the legitimate objectives pursued by the European Communities through the EC Regulation. In any event, the Panel’s ultimate finding was upheld because the Panel also found that Peru had proved that Codex Stan 94 was effective and appropriate to fulfil those objectives. The Appellate Body also made rulings on two procedural issues. First, the Appellate Body found that it was permissible for the European Communities to withdraw its Notice of Appeal and replace it with another one. Second, the Appellate Body confirmed that it could accept and consider *amicus curiae* briefs submitted by private individuals and found, for the first time, that it could accept and consider *amicus curiae* briefs submitted by WTO members that were not parties to the dispute. Nevertheless, the Appellate Body did not find it necessary to consider the *amicus curiae* briefs submitted, because their content were not of assistance to them in this appeal. On 23 October 2002, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

UNITED STATES—*Preliminary determinations with respect to certain softwood lumber from Canada, complaint by Canada (WT/DS236)*.

This dispute concerns the preliminary countervailing duty determination and the preliminary critical circumstances determination made by the United States Department of Commerce on 9 August 2001, with respect to certain softwood lumber from Canada. This dispute also concerns United States law on expedited and administrative reviews in the context of countervailing measures. As far as the preliminary countervailing duty determination was concerned, Canada considered this determination to be inconsistent with the obligations of the United States under articles 1, 2, 10, 14, 17.1, 17.5, 19.4 and 32.1 of the SCM Agreement and article VI:3 of GATT 1994. With respect to the preliminary critical circumstances determination, Canada considered this determination to be inconsistent with articles 17.1, 17.3, 17.4, 19.4 and 20.6 of the SCM Agreement. As regards United States measures on company-specific expedited reviews and administrative reviews, Canada considered these measures to be inconsistent with the obligations of the United States under article VI:3 of GATT 1994 and articles 10, 19.3, 19.4, 21.1, 21.2 and 32.1 of the SCM Agreement. Canada also asserted that the United States had failed to ensure that its laws and regulations were in conformity with its WTO obligations as required by article 32.5 of the SCM Agreement and article XVI:4 of the WTO Agreement. At its meeting on 5 December 2001, DSB established a panel. The European Communities and India reserved their third-party rights to participate in the panel proceedings. On 17 December 2001, Japan requested to participate in the proceedings as a third party.

The Panel circulated its report on 27 September 2002. The Panel found that imposition of provisional countervailing measures by the United States was inconsistent with the obligations of the United States under articles 1.1 (b), 14 and 14 (d) of the SCM Agreement as well as articles 10 and 17.1 (b) of the SCM Agreement, as these provisional measures were imposed on the basis of an inconsistent preliminary determination of the existence of a subsidy. According to the Panel, the United States Department of Commerce's preliminary countervailing duty determination had failed to determine the existence and amount of benefit to the producers of the subject merchandise on the basis of the prevailing market conditions in Canada as required by article 1.1 (b) and article 14 and 14 (d) of the SCM Agreement. The Panel also found that the Canadian "stumpage" practices constituted the provision of a good or service by the Government which, if conferring a benefit, could be considered as a subsidy. With regard to the preliminary critical circumstances determination, the Panel found that the application of provisional measures in the form of cash deposits or bonds under the Department of Commerce's preliminary critical circumstances determination was inconsistent with article 20.6 of the SCM Agreement, as this provision did not allow for the retroactive application of provisional measures. In addition, the Panel found that the provisional measures at issue had been applied in violation of article 17.3 and 17.4 of the SCM Agreement as they were imposed less than 60 days after initiation and covered imports for a period of more than four months. Finally, the Panel found that the United

States laws and regulations on expedited and administrative reviews were not inconsistent with the SCM Agreement as they did not require the executive authority to act in a manner inconsistent with the obligations of the United States under articles 19 and 21 of the SCM Agreement concerning expedited and administrative reviews. DSB adopted the Panel report at its meeting of 1 November 2002.

Implementation of adopted reports

DSU requires DSB to keep under surveillance the implementation of adopted recommendations or rulings (DSU, art. 21.6). This section reflects developments concerning this surveillance, and includes information relating to: (i) the determination, where relevant, of a reasonable period of time for the member concerned to bring its measures into conformity with its obligations under the WTO Agreements (DSU, art. 21.3); (ii) recourse to dispute settlement procedures in cases of disagreement regarding the existence or consistency of measures taken to comply with the recommendations and rulings (DSU, art. 21.5); and (iii) suspension of concessions in case of non-implementation of the recommendations of DSB (DSU, art. 22).

EUROPEAN COMMUNITIES—*Regime for the importation, sale and distribution of bananas, complaints by Ecuador, Guatemala, Honduras, Mexico and the United States (WT/DS27)*. At its meeting of 25 September 1997, DSB adopted the Appellate Body report and the Panel reports, as modified by the Appellate Body report, recommending that the European Communities bring its regime for the importation, sale and distribution of bananas into conformity with its obligations under GATT 1994 and the General Agreement on Trade in Services (GATS). At the DSB meeting on 18 December 2001, the European Communities welcomed the granting of the two waivers by the Ministerial Conference, which were the prerequisite for the implementation of phase II of the understandings reached with the United States and Ecuador. The European Communities noted that the Regulation implementing phase II would be adopted on 19 December 2001, with effect on 1 January 2002. Ecuador, Honduras, Panama and Colombia noted the progress made and sought information from the European Communities concerning the granting of import licences by one European Communities member State in a manner that was inconsistent with the understandings. On 21 January 2002, the European Communities announced that Regulation (EC) No. 2587/2001 had been adopted by the Council on 19 December 2001 and indicated that through this Regulation, the European Communities had implemented phase II of the understandings with the United States and Ecuador.

CANADA—*Measures affecting the importation of milk and the exportation of dairy products, complaints by the United States and New Zealand (WT/DS103 and WT/DS113)*. At its meeting of 27 October 1999, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, recommending that Canada bring the measures at

issue into conformity with its obligations under the Agreement on Agriculture and GATT 1994. The Panel and the Appellate Body found that Canada had acted inconsistently with its obligations under articles 3.3 and 8 of the Agreement on Agriculture by providing “export subsidies” in excess of the quantity commitment levels specified by Canada in its Schedule to that Agreement. The Panel and the Appellate Body also found that one of Canada’s restrictions on access to a tariff-rate quota constituted a violation of article II:1 (b) of GATT 1994.

Pursuant to article 21.3 (b) of DSU, the parties to the dispute agreed that Canada should have until 31 January 2001 to implement the recommendations and rulings of DSB. Canada subsequently modified its regimes for both the importation and exportation of dairy products. On 1 March 2001, New Zealand and the United States requested DSB to refer the matter to the original panel, pursuant to article 21.5 of DSU, to determine the consistency of the modified Canadian measures with Canada’s obligations under the Agreement on Agriculture. The Panel found that Canada continued to act inconsistently with its obligations under articles 3.3 and 8 of the Agreement on Agriculture by providing “export subsidies” within the meaning of article 9.1 (c) in excess of the quantity commitment levels specified in its Schedule to that Agreement. On 4 September 2001, Canada appealed the compliance Panel report. The report of the Appellate Body was circulated to members on 3 December 2001. The Appellate Body reversed the Panel’s finding that the measure at issue—the supply of commercial export milk (CEM) by Canadian milk producers to Canadian dairy processors—involved “payments” on the export of milk that were “financed by virtue of governmental action” under article 9.1 (c) of the Agreement on Agriculture. The Appellate Body ruled that it did not have a sufficient factual record to enable it to determine whether CEM involved “export subsidies” under the Agreement on Agriculture. On 17 January 2002, a second compliance panel was composed under article 21.5 of DSU. On 26 July 2002, the report was circulated to the members. The Panel concluded that Canada, through the CEM scheme and the continued operation of certain special milk classes, had acted inconsistently with its obligations under articles 3.3 and 8 of the Agreement on Agriculture, by providing export subsidies within the meaning of article 9.1 (c) of the Agreement on Agriculture in excess of its quantity commitment levels specified in its Schedule for exports of cheese and “other dairy products”. It also concluded that, in the alternative, Canada had acted inconsistently with its obligations under article 10.1 of the Agreement on Agriculture and that therefore Canada had acted inconsistently with its obligations under article 8 of the Agreement on Agriculture. Accordingly, the Panel recommended that DSB request Canada to bring its dairy products marketing regime into conformity with its obligations in respect of export subsidies under the Agreement on Agriculture.

On 23 September 2002, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the second compliance

panel. The report of the Appellate Body on compliance was circulated on 20 December 2002. The Appellate Body upheld the Panel's finding that the measure at issue—the supply of CEM by Canadian milk producers to Canadian dairy processors—involved export subsidies in the form of “payments” on the export of milk that were “financed by virtue of governmental action” within the meaning of article 9.1 (c) of the Agreement on Agriculture. The Appellate Body reversed the Panel's interpretation of the rules on burden of proof in article 10.3 of the Agreement on Agriculture. However, the Appellate Body held that this error did not affect any of the Panel's other findings under the Agreement on Agriculture. In view of its conclusion under article 9.1 (c) of the Agreement on Agriculture, the Appellate Body declined to rule on the Panel's alternative finding under article 10.1 of that Agreement.

UNITED STATES—*Tax treatment for “foreign sales corporations”, complaint by the European Communities (WT/DS108)*. At its meeting of 20 March 2000, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body, finding that the tax exemption measure at issue, the FSC measure, constituted a prohibited subsidy under article 3.1 (a) of the SCM Agreement and articles 10.1 and 8 of the Agreement on Agriculture. DSB specified that the FSC subsidies should be withdrawn by 1 October 2000. On 12 October 2000, DSB agreed to the request of the United States that the time period for withdrawal of the subsidies should be modified so as to expire on 1 November 2000.

On 15 November 2000, with a view to implementing the rulings and recommendations of DSB, the United States enacted the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (the ETI Act). On 17 November 2000, the European Communities requested authorization from DSB to suspend concessions and other obligations, as provided for in article 22.2 of DSU. The United States objected to the level of suspension proposed, and the matter was referred to arbitration, pursuant to article 22.6 of DSU and article 4.11 of the SCM Agreement. However, the parties agreed to defer this arbitration proceeding pending the outcome of the article 21.5 proceeding. Following a request made by the European Communities, DSB, at its meeting on 20 December 2000, referred the matter to the original panel, pursuant to article 21.5 of DSU (compliance panel), to determine the consistency of the ETI Act with the obligations of the United States under the SCM Agreement, the Agreement on Agriculture and GATT 1994.

The compliance Panel report, which was circulated to WTO members on 20 August 2001, found that the ETI Act (the amended FSC legislation) was also inconsistent with articles 3.1 (a) and 3.2 of the SCM Agreement, with articles 8 and 10.1 of the Agreement on Agriculture and with article III:4 of GATT 1994. On 15 October 2001, the United States notified its decision to appeal certain issues of law and legal interpretations developed by the Panel report.

The Appellate Body upheld the Panel's findings that the United States had acted inconsistently with its obligations under the SCM Agreement, the Agreement on Agriculture and GATT 1994 through the ETI Act, a measure taken by the United States to implement the recommendations and rulings made by DSB in the original proceedings in the United States–FSC dispute. The report of the Appellate Body was circulated to WTO members on 14 January 2002. DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, at its meeting on 29 January 2002. In accordance with the procedural agreement concluded by the parties to the dispute in September 2000 (WT/DS108/12), the article 22.6 arbitration on the amount of countermeasures and suspension of concessions was automatically reactivated. On 30 August 2002, the arbitrator's award was circulated.

The arbitrator determined that the suspension by the European Communities of concessions under GATT 1994 in the form of the imposition of a 100 per cent ad valorem charge on imports of certain goods from the United States in a maximum amount of \$4,043,000,000 per year, as described in the European Communities request for authorization to take countermeasures and suspend concessions, would constitute appropriate countermeasures within the meaning of article 4.10 of the SCM Agreement.

THAILAND—*Anti-dumping duties on angles, shapes and sections of iron or non-alloy steel and H-beams from Poland, complaint by Poland (WT/DS122)*. At its meeting of 5 April 2001 DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, recommending that Thailand bring its measures into conformity with its obligations under the Anti-Dumping Agreement. At the DSB meeting on 18 December 2001, Thailand announced that it had fully implemented the recommendations of DSB. Poland said that it could not accept the way in which Thailand had implemented the DSB recommendations because it expected that the measures in question would be either rescinded or modified. In Poland's view, Thailand only changed the justification for the imposition of the measures. Poland reserved its rights under article 21.5 of DSU.

On 18 December 2001, Thailand and Poland concluded an understanding with regard to possible proceedings under articles 21 and 22 of DSU. Pursuant to the understanding, in the event that Poland initiated proceedings under articles 21.5 and 22 of DSU, Poland agreed to initiate complete proceedings under article 21.5 prior to any proceedings under article 22. On 21 January 2002, the parties informed DSB that they had reached an agreement to the effect that the implementation of the recommendations of DSB in this dispute should no longer remain on the agenda of DSB.

UNITED STATES—*Anti-Dumping Act of 1916, complaints by the European Communities and Japan (WT/DS136 and WT/DS162)*. At its meeting

of 26 September 2000, DSB adopted the Appellate Body report and the Panel report, as upheld by the Appellate Body report, recommending that the United States bring the Anti-Dumping Act of 1916 into conformity with its obligations under the Anti-Dumping Agreement. At the DSB meeting of 23 October 2000, the United States stated that it was its intention to implement the recommendations and rulings of DSB. The United States also stated that it would require a reasonable period of time for implementation and that it would consult with the European Communities and Japan on this matter. On 7 January 2002, on the grounds that the United States had failed to bring its measures into conformity within the reasonable period of time, the European Communities and Japan requested authorization to suspend concessions pursuant to article 22.2 of DSU. On 17 January 2002, the United States objected to the levels of suspension of obligations proposed by the European Communities and Japan and requested DSB to refer the matter to arbitration, in accordance with article 22.6 of DSU. At the DSB meeting on 18 January 2002, the matter was referred to arbitration.

On 25 February 2002, the United States submitted to DSB a status report regarding implementation of the DSB recommendations and rulings. On 27 February 2002, the parties requested the arbitrator to suspend the arbitration proceeding, noting that a proposal to repeal the 1916 Act and to terminate cases pending under the Act was being examined by the United States Congress. The parties noted, however, that the arbitration proceeding could be reactivated at the request of either party after 30 June 2002 if no substantial progress had been made in resolving the dispute by then. At the DSB meeting on 17 April 2002, the United States submitted its status report regarding implementation of the DSB recommendations and rulings. The United States stated that a bill had already been introduced to repeal the 1916 Act and terminate some pending cases. While acknowledging the progress made, the European Communities and Japan stressed the necessity for prompt compliance. Japan noted that under its bilateral agreement with the United States, either party could reactivate the arbitration proceedings after 30 June 2002. At the DSB meeting on 22 May 2002, the United States submitted its status report regarding the implementation of the DSB recommendations and rulings. The United States stated that on 23 April 2002 a bill had been introduced in the United States Senate which would repeal the 1916 Act and apply to all pending court cases. At consecutive DSB meetings the European Communities and Japan expressed concern about the lack of progress in this matter and urged the United States to repeal the 1916 Act as soon as possible; they indicated that swift action was imperative to prevent their companies from incurring huge expenses under WTO-inconsistent legislation.

EUROPEAN COMMUNITIES—*Anti-dumping duties on imports of cotton-type bed linen, complaint by India (WT/DS141)*. At its meeting of 12 March 2001, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, recommending that India bring

its measures found to be inconsistent with the Anti-Dumping Agreement into conformity with its obligations under that Agreement. On 8 March 2002, India sought recourse to article 21.5 of DSU, stating that there was disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings. On 4 April 2002, India requested the establishment of a compliance panel. At the DSB meeting on 17 April 2002, India informed DSB that, pursuant to an understanding reached between the European Communities and India, it was requesting the withdrawal of the item from the agenda in accordance with rule 6 of the rules of procedure for WTO meetings. DSB agreed to India's request. On 7 May 2002, India again requested the establishment of a compliance panel. At the DSB meeting on 22 May 2002, it was agreed that, if possible, the matter would be referred to the original panel. The United States reserved its third-party rights to participate in the proceedings.

The Panel circulated its report to members on 29 November 2002. The Panel concluded that the European Communities' definitive anti-dumping measure on imports of bed linen from India, based on a redetermination of injury and a recalculation of dumping margins for Indian producers, was not inconsistent with the Anti-Dumping Agreement or DSU and therefore considered that the European Communities had implemented the recommendation of the original Panel, the Appellate Body and DSB to bring its measure into conformity with its obligations under the Anti-Dumping Agreement.

INDIA—*Measures affecting the automotive sector, complaint by the European Communities and the United States (WT/DS146 and WT/DS175)*. At the DSB meeting on 5 April 2002, DSB adopted the Appellate Body and Panel reports. On 2 May 2002, India informed DSB that it would need a reasonable period of time to implement the recommendations and rulings of DSB and that it was ready to enter into discussions with the European Communities and the United States in this regard. On 18 July 2002, the parties informed DSB that they had mutually agreed that the reasonable period of time to implement the recommendations and rulings of DSB would be five months, from 5 April 2002 to 5 September 2002. On 6 November 2002, India informed DSB that it had fully complied with the recommendations of DSB in this dispute by issuing Public Notice No. 31, on 19 August 2002, terminating the trade balancing requirement. India also reported that on 4 September 2001 it had removed the indigenization requirement in respect of Public Notice No. 30.

ARGENTINA—*Measures on the export of bovine hides and the import of finished leather, complaint by the European Communities (WT/DS155)*. At the DSB meeting on 16 February 2001, DSB adopted the Panel report recommending that Argentina bring its measures into conformity with its obligations under GATT 1994. The reasonable period of time determined by binding arbitration pursuant to article 21.3 (c) of DSU expired on 28 February 2002. In view of the concrete action undertaken by

Argentina to comply with the DSB recommendations and rulings during the reasonable period of time in this dispute, and in light of the economic problems that Argentina was currently facing, the parties agreed on the following procedures: the parties would pursue their discussions on compliance by Argentina with the DSB recommendations and rulings, and the European Communities would retain the right to make a request for authorization to suspend concessions or other obligations under DSU at any time after the expiry of the reasonable period of time, but only after completion of proceedings under article 21.5 of DSU. On 25 February 2002, the parties requested DSB to circulate their agreement on procedures under articles 21 and 22 of DSU. On 8 March 2002, the parties notified DSB of their agreement.

UNITED STATES—*Section 110(5) of the United States Copyright Act, complaint by the European Communities (WT/DS160)*. At its meeting of 27 July 2000, DSB adopted the Panel report recommending that the United States bring subparagraph (B) of section 110(5) of the United States Copyright Act into conformity with its obligations under the TRIPS Agreement. On 7 January 2002, on the grounds that the United States had failed to bring its measures into conformity within the reasonable period of time, the European Communities requested authorization to suspend concessions pursuant to article 22.2 of DSU. The European Communities proposed to suspend concessions under the TRIPS Agreement in order to permit the levying of a special fee from United States nationals in connection with border measures concerning copyright goods. On 17 January 2002, the United States objected to the level of suspension of obligations proposed by the European Communities and requested DSB to refer the matter to arbitration, in accordance with article 22.6 of DSU. The United States claimed that the principles and procedures of article 22.3 had not been followed. During the DSB meeting on 18 January 2002, the parties indicated, however, that they were engaged in constructive negotiations and were hopeful of finding a mutually satisfactory solution. On 25 February 2002, the United States submitted a status report regarding implementation of the DSB recommendations and rulings. On 26 February 2002, the parties requested the arbitrator to suspend the arbitration proceeding, while noting that the proceeding could be reactivated at the request of either party after 1 March 2002.

At the DSB meetings throughout 2002, the United States presented status reports in which it stated that the United States and the European Communities were committed to finding a positive and mutually acceptable solution to the dispute and that the United States administration would continue to engage the United States Congress with a view to settling this dispute as soon as practicable. The European Communities expressed disappointment with the lack of implementation by the United States and urged the United States to take rapid and concrete action to settle this dispute.

UNITED STATES—*Section 211 of the Omnibus Appropriations Act, complaint by the European Communities (WT/DS176)*. DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on 1 February 2002, recommending that the United States bring its measure found to be inconsistent with the TRIPS Agreement into conformity with its WTO obligations. At the DSB meeting on 19 February 2002, the United States stated that it needed a reasonable period of time to comply with the rulings and recommendations of DSB. On 28 March 2002, the United States and the European Communities informed DSB that they had reached a mutual agreement on the reasonable period of time for the United States to implement the recommendations and rulings of DSB. The reasonable period of time was due to expire on 31 December 2002, or on the date on which the current session of the United States Congress adjourned, and in no event later than 3 January 2003. On 20 December 2002, the European Communities and the United States informed DSB that they had mutually agreed to modify the reasonable period of time for the United States to implement the recommendations and rulings of DSB, so as to expire on 30 June 2003.

UNITED STATES—*Anti-dumping measures on certain hot-rolled steel products from Japan, complaint by Japan (WT/DS184)*. At its meeting of 23 August 2001 DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report recommending that the United States bring its measures into conformity with its obligations under the Anti-Dumping Agreement. On 20 November 2001, Japan requested that the reasonable period of time for implementation of the recommendations of DSB be determined by binding arbitration under article 21.3 (c) of DSU. Pending the appointment of the arbitrator, Japan and the United States agreed to extend the time period under that provision. They agreed that the award of the arbitrator was to be made no later than 19 February 2002. On 19 February 2002, the arbitrator circulated his award. The arbitrator concluded that the reasonable period of time for implementation by the United States of the recommendations of DSB was 15 months from 23 August 2001. Accordingly, this period expired on 23 November 2002.

At the DSB meeting on 1 October 2002, the United States presented its status report regarding the implementation of the recommendations and rulings of DSB. At the DSB meeting of 28 November 2002, the United States stated that the Department of Commerce had issued a new final determination in the hot-rolled steel anti-dumping duty investigation, which implemented the recommendations and rulings of DSB with respect to the calculation of anti-dumping margins in that investigation. Regarding the recommendations and rulings of DSB with respect to the United States anti-dumping statute, the United States stated that the United States administration was continuing to consult and to work with the United States Congress with a view to resolving the dispute in a mutually satisfactory manner. To that end, the United States was consulting with Japan and had

sought its agreement to extend the reasonable period of time in this case to 31 December 2003 or the end of the first session of the next Congress, whichever was earlier. Japan stated that, while it would probably agree to an extension of the reasonable period of time, it expected the United States to bring its measures into compliance as soon as practicable. Japan also reserved its right to take appropriate action in the event of non-compliance occurring again by the United States. At its meeting on 5 December 2002, DSB agreed to the request by the United States for an extension of the reasonable period of time for the implementation of the recommendations and rulings of DSB in this dispute.

ARGENTINA—*Definitive anti-dumping measures on imports of ceramic floor tiles from Italy, complaint by the European Communities (WT/DS189)*. At its meeting on 5 November 2001, DSB adopted the Panel report recommending that Argentina bring its measures into conformity with its obligations under the Anti-Dumping Agreement. On 20 December 2001, the European Communities and Argentina informed DSB that they had mutually agreed a reasonable period of time of five months to implement the recommendations and rulings of DSB, i.e. from 5 November 2001 until 5 April 2002. At the DSB meeting of 22 May 2002, Argentina announced that on 24 April 2002 the Ministry of Production had enacted resolution 76/02 revoking the anti-dumping measures at issue in this case. With the publication of this resolution, Argentina considered that it had fully implemented the recommendations and rulings of DSB in this dispute. The European Communities welcomed Argentina's prompt implementation in this case.

UNITED STATES—*Definitive safeguard measures on imports of circular welded carbon quality line pipe from the Republic of Korea, complaint by the Republic of Korea (WT/DS202)*. On 8 March 2002, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report recommending that the United States bring the line pipe measure found to be inconsistent with the obligations of the United States under the Agreement on Safeguards and GATT 1994 into conformity with its obligations under those Agreements. On 29 April 2002, the Republic of Korea proposed to DSB that the "reasonable period of time" should be determined by binding arbitration pursuant to article 21.3 (c) of DSU. On 13 May 2002, Korea requested the Director-General to appoint an arbitrator. The issuance of the award was scheduled for 12 July 2002. By joint letter of 12 July 2002, the parties requested the arbitrator to delay the issuance of the award until 22 July 2002 in order to allow time for additional bilateral negotiations between the parties. The arbitrator acceded to the request. Further joint requests for delay were requested and agreed to. By letters dated 24 July 2002, the parties informed the arbitrator that they had reached agreement on the reasonable period of time for compliance in this matter. Accordingly, the arbitrator did not issue his award and, instead, issued a report setting out the procedural history of this arbitration.

UNITED STATES—*Anti-dumping and countervailing measures on steel plate from India, complaint by India (WT/DS206)*. At its meeting on 29 July 2002, DSB adopted the Panel report recommending that India bring its disputed measure into conformity with its obligations under the Anti-Dumping Agreement. On 1 October 2002, the United States and India informed DSB that pursuant to article 21.3 (b) of DSU they had mutually agreed that the reasonable period of time to implement the DSB recommendations and rulings in this dispute would be five months, from 29 July 2002 to 29 December 2002.

CHILE—*Price band system and safeguard measures relating to certain agricultural products, complaint by Argentina (WT/DS207)*. At its meeting on 23 October 2002, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report requesting Chile to bring its price band system into conformity with its obligations under the Agreement on Agriculture. At the DSB meeting of 11 November 2002, Chile stated that it intended to comply with the recommendations and rulings of DSB. To that end, Chile was engaged in consultations with Argentina to find a mutually satisfactory solution to the dispute. Chile further stated that it would need a reasonable period of time to bring its measures into conformity with the recommendations and rulings of DSB. On 6 December 2002, Chile informed DSB that to date Chile and Argentina had been unable to agree on the length of the reasonable period of time and thus Chile was requesting that the determination of the reasonable period of time be the subject of binding arbitration in accordance with article 21.3 (c) of DSU. On 16 December 2002, Argentina and Chile informed DSB that they had agreed to postpone the deadline for the binding arbitration, which would now be completed no later than 90 days from the appointment of the arbitrator (instead of 90 days from the date of adoption of the rulings and recommendations of DSB).

EGYPT—*Definitive anti-dumping measures on steel rebar from Turkey, complaint by Turkey (WT/DS211)*. On 1 October 2002, DSB adopted the Panel report recommending that Egypt bring its definitive anti-dumping measures on imports of steel rebar from Turkey into conformity with the relevant provisions of the Anti-Dumping Agreement. On 14 November 2002, Egypt and Turkey informed the Chairman of DSB that they had mutually agreed that the reasonable period of time to implement the recommendations and rulings of DSB should not be more than nine months, that is from 1 November 2002 until 31 July 2003.

CANADA—*Export credits and loan guarantees for regional aircraft, complaint by Brazil (WT/DS222)*. The report of the Panel recommending that Canada withdraw the disputed subsidies was adopted by DSB at its meeting on 19 February 2002. On 23 May 2002, on the grounds that Canada had failed to implement the recommendations of DSB within the 90-day time period granted by DSB, Brazil requested authorization to suspend concessions pursuant to article 22.2 of DSU. Brazil proposed that the

suspension of concessions should take the form of some or all of the following countermeasures: (i) suspension of its obligations under paragraph 6 (a) of article VI of GATT 1994 to determine the effect of subsidization under Export Development Canada (EDC) Canada Account and EDC Corporate Account programmes; (ii) suspension of application of obligations under the Agreement on Import Licensing Procedures relating to licensing requirements on imports from Canada; and (iii) suspension of tariff concessions and related obligations under GATT 1994 concerning those products in the list attached to Brazil's communication of 23 May 2002.

At the DSB meeting on 3 June 2002, Brazil and Canada informed DSB that they had reached an agreement in this matter. Under the terms of the agreement, the parties agreed that it would in no way prejudice the right of Brazil to request authorization to take appropriate countermeasures under article 4.10 of the SCM Agreement and article 22.2 of DSU, nor affect the relevant time periods under DSU. At the DSB meeting on 24 June 2002, Brazil stated that it was requesting authorization to suspend concessions for an amount of US\$ 3.36 billion towards Canada as the latter had failed to withdraw its prohibited export subsidies within the time frame specified by the Panel. Canada disputed Brazil's right to request authorization from DSB to suspend concessions. It argued that Brazil had not fulfilled the conditions spelled out in article 22.2 of DSU and as such it could not avail itself of article 22.6 of DSU. Canada also objected to the countermeasures proposed by Brazil. DSB referred the matter to arbitration according to article 22.6 of DSU and article 4.11 of the SCM Agreement.

EUROPEAN COMMUNITIES—*Trade description of sardines, complaint by Peru (WT/DS231)*. On 23 October 2002, DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report recommending that the European Communities bring its measure into conformity with its obligations under the TBT Agreement. At the DSB meeting of 11 November 2002, the European Communities stated that it was working towards implementing the rulings and recommendations of DSB in a manner consistent with its obligations under WTO rules, in particular, article 2.4 of the TBT Agreement. However, the European Communities stated that in order to be able to achieve this it would need a reasonable period in which to bring its measures into conformity with its obligations under the TBT Agreement, especially given that implementation would entail the repeal of a statutory measure. To that end, the European Communities was willing to consult with Peru, pursuant to article 21.3 of DSU, in order to achieve agreement on the reasonable period of time needed for implementation of the rulings and recommendations of DSB. On 19 December 2002, Peru and the European Communities informed DSB that they had agreed that the reasonable period of time for the European Communities to implement the recommendations and rulings of DSB would expire on 23 April 2003.

UNITED STATES—*Preliminary determinations with respect to certain softwood lumber from Canada, complaint by Canada (WT/DS236)*. DSB adopted the Panel report at its meeting of 1 November 2002 recommending that the United States bring its measure into conformity with its obligations under the SCM Agreement. At the DSB meeting of 28 November 2002, the United States said that the measures at issue in this dispute were no longer in effect and that the provisional cash deposits that Canada had challenged had been refunded prior to the circulation of the Panel report. As such, it was not necessary for the United States to take any further action to comply with the recommendations and rulings of DSB. Canada dismissed the view of the United States that no action was required on its part to implement the recommendations and rulings of DSB. Canada stated that the methodologies found by the Panel to be plainly illegal in the United States preliminary countervailing duty determination remained unchanged in the final determination.

Panel reports pending before the Appellate Body

UNITED STATES—*Continued dumping and subsidy offset act of 2000, joint complaint by Australia, Brazil, Chile, the European Communities, India, Indonesia, Japan, the Republic of Korea and Thailand (WT/DS217) and by Canada and Mexico (WT/DS234)*. This dispute concerns the amendment to the Tariff Act of 1930 signed into law by the President on 28 October 2000, entitled the “Continued Dumping and Subsidy Offset Act of 2000” (the Act), usually referred to as the Byrd Amendment. According to the complainants, the Act mandates the United States customs authorities to distribute, on an annual basis, the duties assessed pursuant to a countervailing duty order, an anti-dumping order or a finding under the Anti-dumping Act of 1921 to the “affected domestic producers” for their “qualifying expenses”. According to the complainants, the Act is inconsistent with the obligations of the United States under several provisions of GATT, the Anti-Dumping Agreement, the SCM Agreement and the WTO Agreement.

On 16 September 2002, the Panel report was circulated to members. The Panel concluded that the Act was inconsistent with articles 5.4, 18.1 and 18.4 of the Anti-Dumping Agreement, articles 11.4, 32.1 and 32.5 of the SCM Agreement, articles VI:2 and VI:3 of GATT 1994 and article XVI:4 of the WTO Agreement. The Panel rejected the complaining parties’ claims that the Act was inconsistent with articles 8.3 and 15 of the Anti-Dumping Agreement, articles 4.10, 7.9 and 18.3 of the SCM Agreement and article X:3 (a) of GATT 1994. They also rejected Mexico’s claim that the Act violated article 5 (b) of the SCM Agreement. The Act was a new and complex measure, applied in a complex legal environment. In concluding that the Act was in violation of the above-mentioned provisions, the Panel had been confronted by sensitive issues regarding the use of subsidies as trade remedies. If members were of the view that subsidi-

zation was a permitted response to unfair trade practices, the Panel suggested that they clarify the matter through negotiation.

Pursuant to article 3.8 of DSU, the Panel concluded that to the extent that the Act was inconsistent with the provisions of the Anti-Dumping Agreement, the SCM Agreement and GATT 1994, the Act nullified or impaired benefits accruing to the complaining parties under those agreements. The Panel recommended that DSB should request the United States to bring the Act into conformity with its obligations under the Anti-Dumping Agreement, the SCM Agreement and GATT 1994 by repealing the Act.

On 18 October 2002, the United States notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel; more particularly, the United States appealed the Panel's conclusion that the Act was inconsistent with article 18.1 of the Anti-Dumping Agreement and article 32.1 of the SCM Agreement, and with article 5.4 of the Anti-Dumping Agreement and article 11.4 of the SCM Agreement.

Appellate Body reports circulated

UNITED STATES—*Countervailing measures concerning certain products from the European Communities, complaint by the European Communities (WT/DS212)*. This request, dated 8 August 2001, concerns the imposition and continued application by the United States of countervailing duties on a number of products. In particular, the European Communities claimed that the continued imposition and application by the United States of countervailing duties was based on an irrefutable presumption that non-recurring subsidies granted to a former producer of goods, prior to a change of ownership, “pass through” to the current producer of the goods following the change of ownership.

On 31 July 2002, the Panel report was circulated to members. One of the determinations by the United States Department of Commerce was based on the “same person” methodology. The Panel found that such determination was inconsistent with the requirements of the SCM Agreement because, in situations where the State-owned enterprise and the newly privatized firm have the same legal personality, the United States Department of Commerce is prevented from evaluating whether a “benefit” in fact continues to exist after privatization. The other 11 determinations were based on the “gamma” methodology (which was the subject of the United States—Lead and bismuth II Appellate Body report, WT/DS138).

The Panel concluded that those determinations were inconsistent with the SCM Agreement because the United States Department of Commerce had not examined whether the privatizations had taken place at arm's length and for fair market value and thus had not determined whether the new privatized producers had received any “benefit” from the previous subsidy to the State-owned enterprise. The Panel concluded that privatization at arm's

length and for fair market value always extinguishes any remaining part of a “benefit” previously bestowed to the State-owned enterprise by a non-recurring financial contribution. The Panel further concluded that, since two of those privatizations had taken place at arm’s length and for fair market value, the “benefit[s]” resulting from the subsidy to the previous State trading enterprise were extinguished vis-à-vis the new privatized producer. As regards the consistency of United States internal legislation with WTO obligations, the Panel found that the United States statute was inconsistent with the WTO obligations of the United States because it mandated the United States Department of Commerce to exercise discretion, preventing it from “systematically” (that is, automatically) determining that a privatization at arm’s length and for fair market value extinguishes the “benefit”. In other words, vesting the United States Department of Commerce with discretion in determining the continuing existence of a “benefit” renders the legislation inconsistent with the WTO obligations of the United States.

On 9 September 2002 the United States notified its decision to appeal all the “conclusions” of the Panel. On 9 December 2002, the Appellate Body report was circulated to members. The Appellate Body: (i) upheld the Panel’s findings that the determinations of the United States Department of Commerce in 12 countervailing duty cases were inconsistent with the SCM Agreement because the investigating authority had failed to ascertain the continued existence of a “benefit” following privatization of recipients of prior non-recurring financial contributions; (ii) reversed the Panel’s finding that an investigating authority must “systematically” (i.e. automatically) conclude that a “benefit” no longer exists for a firm that has been privatized at arm’s length and for fair market value; and (iii) consequently, reversed the Panel’s conclusion that the relevant United States statute was inconsistent with the SCM Agreement and article XVI:4 of the WTO Agreement as the Panel had based its conclusion on the WTO-consistency of the United States internal legislation on its erroneous finding that an arm’s length, fair market value privatization necessarily and always prevents the benefit from accruing to the new private firm.

Panels established by DSB

The following table lists the panels established by DSB in 2002.

<i>Dispute</i>	<i>Complainant</i>	<i>Panel established</i>
<i>Argentina</i> Definitive safeguard measure on imports of preserved peaches (WT/DS238)	Chile	18 January 2002
<i>Mexico</i> Measures affecting telecommunications services (WT/DS204)	United States	17 April 2002

<i>Dispute</i>	<i>Complainant</i>	<i>Panel established</i>
<i>Argentina</i> Definitive anti-dumping duties on poultry (WT/DS241)	Brazil	17 April 2002
<i>United States</i> Sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan (WT/DS244)	Japan	22 May 2002
<i>Japan</i> Measures affecting the importation of apples (WT/DS245)	United States	3 June 2002
<i>United States</i> Definitive safeguard measures on imports of certain steel products (WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258, WT/DS259)	European Communities, Japan, Republic of Korea, China, Switzerland, Norway, New Zealand, Brazil	14 June 2002
<i>United States</i> Rules of origin for textiles and apparel products (WT/DS243)	India	24 June 2002
<i>European Communities</i> Provisional safeguard measures on imports of certain steel products (WT/DS260)	United States	16 September 2002
<i>United States</i> Equalizing excise tax imposed by Florida on processed orange and grapefruit products (WT/DS250)	Brazil	1 October 2002
<i>United States</i> Final countervailing duty determination with respect to certain softwood lumber from Canada (WT/DS257)	Canada	1 October 2002

Active panels

The following table lists those panels that were still active as at 31 December 2002 (the list excludes panels established in 2002).

<i>Dispute</i>	<i>Complainant</i>	<i>Panel established</i>
<i>Argentina</i> Measures affecting imports of footwear (WT/DS164)	United States	26 July 1999
<i>Nicaragua</i> Measures affecting imports from Honduras and Colombia (WT/DS188)	Colombia	18 May 2000
<i>Philippines</i> Measures affecting trade and investment in the motor vehicle sector (WT/DS195)	United States	17 November 2000
<i>United States</i> Definitive safeguard measures on imports of steel wire rod and circular welded carbon quality line pipe (WT/DS214)	European Communities	10 September 2001
<i>European Communities</i> Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil (WT/DS219)	Brazil	24 July 2001

Requests for consultations

The following list does not include those disputes where a panel was either requested or established in 2002.

<i>Dispute</i>	<i>Complainant</i>	<i>Date of request</i>
<i>European Communities</i> Conditions for the granting of tariff preferences to developing countries (WT/DS246)	India	5 March 2002
<i>United States</i> Provisional anti-dumping measure on imports of certain softwood lumber from Canada (WT/DS247)	Canada	6 March 2002

<i>Dispute</i>	<i>Complainant</i>	<i>Date of request</i>
<i>Peru</i> Tax treatment on certain imported products (WT/DS255)	Chile	22 April 2002
<i>Turkey</i> Import ban on pet food from Hungary (WT/DS256)	Hungary	3 May 2002
<i>Uruguay</i> Tax treatment on certain products (WT/DS261)	Chile	18 June 2002
<i>United States</i> Sunset reviews of anti-dumping and countervailing duties on certain steel products from France and Germany (WT/DS262)	European Communities	25 July 2002
<i>European Communities</i> Measures affecting imports of wine (WT/DS263)	Argentina	4 September 2002
<i>United States</i> Final dumping determination on softwood lumber from Canada (WT/DS264)	Canada	13 September 2002
<i>European Communities</i> Export subsidies on sugar (WT/DS265)	Australia	27 September 2002
<i>European Communities</i> Export subsidies on sugar (WT/DS266)	Brazil	27 September 2002
<i>United States</i> Subsidies on upland cotton (WT/DS267)	Brazil	27 September 2002
<i>United States</i> Sunset review of anti-dumping measures on oil country tubular goods from Argentina (WT/DS268)	Argentina	7 October 2002
<i>European Communities</i> Customs classification of frozen boneless chicken (WT/DS269)	Brazil	11 October 2002

<i>Dispute</i>	<i>Complainant</i>	<i>Date of request</i>
<i>Australia</i> Certain measures affecting the importation of fresh fruit and vegetables (WT/DS270)	Philippines	18 October 2002
<i>Australia</i> Certain measures affecting the importation of fresh pineapple (WT/DS271)	Philippines	18 October 2002
<i>Peru</i> Provisional anti-dumping duties on vegetable oils from Argentina (WT/DS272)	Argentina	21 October 2002
<i>Republic of Korea</i> Measures affecting trade in commercial vessels (WT/DS273)	European Communities	21 October 2002
<i>United States</i> Definitive safeguard measures on imports of certain steel products (WT/DS274)	Taiwan, Province of China	1 November 2002
<i>Venezuela</i> Import licensing measures on certain agricultural products (WT/DS275)	United States	7 November 2002
<i>Canada</i> Measures relating to exports of wheat and treatment of imported grain (WT/DS276)	United States	17 December 2002
<i>United States</i> Investigation of the International Trade Commission in softwood lumber from Canada (WT/DS277)	Canada	20 December 2002
<i>Chile</i> Definitive safeguard measure on imports of fructose (WT/DS278)	Argentina	20 December 2002
<i>India</i> Import restrictions maintained under the export and import policy 2002-2007 (WT/DS279)	European Communities	23 December 2002

Notifications of a mutually agreed solution/settlement

The following table lists the disputes concerning which a solution/settlement were notified.

<i>Dispute</i>	<i>Complainant</i>	<i>Date of notification</i>
<i>Slovakia</i> Safeguard measure on imports of sugar (WT/DS235)	Poland	11 January 2002
<i>Argentina</i> Patent protection for pharmaceuticals and test data protection for agricultural chemicals (WT/DS171)	United States	31 May 2002
<i>Argentina</i> Certain measures on the protection of patents and test data (WT/DS196)	United States	31 May 2002
<i>Peru</i> Tax treatment on certain imported products (WT/DS255)	Chile	25 September 2002
<i>Turkey</i> Fresh fruit import procedures (WT/DS237)	Ecuador	22 November 2002

(e) The legal activities in the councils

The following sections list and summarize the legal activities of the councils and committees of WTO.

General Council

The General Council held six meetings since the period covered by the previous report. The minutes of these meetings and special sessions, which remain the record of the General Council's work, are contained in documents WT/GC/M/72-77.

Trade Negotiations Committee

Reports of the Trade Negotiations Committee (WT/GC/M/73, 74, 75, 76, 77). At the General Council meeting on 13 and 15 February and 1 March 2002, the Chairman of the Trade Negotiations Committee (TNC) reported on the Committee's first meeting on 28 January and 1 Febru-

ary 2002. The representative of Cuba and the Chairman spoke. The General Council took note of the statements and of the report by the TNC Chairman.

At the General Council meeting on 13 and 14 May 2002, the Chairman of the Trade Negotiations Committee reported on the Committee's second meeting on 24 April. The General Council took note of the report by the TNC Chairman.

At the General Council meeting on 8 and 31 July 2002, the Chairman of the Trade Negotiations Committee reported on the Committee's third meeting on 18 and 19 July. The General Council took note of the report by the TNC Chairman.

At the General Council meeting on 15 October 2002, the Chairman of the Trade Negotiations Committee reported on the Committee's fourth meeting on 3 and 4 October. The representative of Kenya (on behalf of the African Group) spoke. The General Council took note of the statements and of the report by the TNC Chairman.

At the General Council meeting on 10-12 and 20 December 2002, the Chairman of the Trade Negotiations Committee reported on the Committee's activities since the last report to the General Council in October. The representatives of Norway, Bulgaria, India, Kenya (on behalf of the African Group) and China, and the Chairman spoke. The General Council took note of the report by the TNC Chairman and of the statements.

Committee on Trade and Development

At its meeting on 8 and 31 July 2002, the General Council considered the report of the Chairman of CTD in special session (TN/CTD/3). The representatives of Kenya (on behalf of the African Group), Zambia, Uganda, the Republic of Korea, Thailand, Brazil, China, Cuba, Indonesia, Paraguay, Malaysia, India, the United States, the European Communities and Nigeria spoke. The General Council took note of the statements and of the report of the Chairman and approved the recommendations contained in paragraphs 14-19 of the report.

At the General Council meeting on 10-12 and 20 December 2002, the Chairman recalled that at its July meeting the General Council had agreed, *inter alia*, to extend the time period for completion of work to be elaborated by the special session of the Committee on Trade and Development to December 2002. The General Council had also agreed to establish a monitoring mechanism for special and differential treatment, and instructed the special session of CTD to elaborate the functions, structure and terms of reference of this mechanism for approval by the General Council. On 10 December, the Chairman of the special session of CTD reported on the work under the mandate of the Committee. The General

Council took note of the report by the Chairman and suspended its consideration of this item.

On 11 December, the Chairman of the special session of CTD made an interim progress report to the General Council in an informal session. The General Council agreed to suspend consideration of this item and revert to it subsequently in light of the advice from the Chairman, but in any event not later than 20 December.

At the resumed meeting on 20 December, the Chairman of CTD in special session said, *inter alia*, that although no agreement had been possible on a report to the General Council, this was far too important an area of work to be left without exerting further efforts towards fulfilment of the mandate. He therefore proposed that the General Council agree to provide additional time to allow CTD in special session to finalize its report. The Chairman proposed that the General Council take note of the statements and authorize CTD in special session to continue its work towards finalizing its report on special and differential treatment pursuant to paragraph 12.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, and to report back to the General Council at its first meeting in 2003. The General Council so agreed.

Committee on Subsidies and Countervailing Measures

Report on review of provisions regarding countervailing duty investigations in pursuance of paragraph 10.3 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/GC/M/75). At its meeting on 8 and 31 July 2002, the General Council considered a report by the Chairman of the Committee on Subsidies and Countervailing Measures (G/SCM/45). The Vice-Chairman of the Committee, speaking on behalf of the Chairman, introduced the report. The representatives of Brazil, India and the United States spoke. The General Council took note of the report of the Chairman and of the statements by delegations.

Statement by the Chairman of the Committee on the work undertaken pursuant to paragraph 10.6 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/GC/M/77). At the General Council meeting on 10-12 and 20 December 2002, the Chairman of the Committee on Subsidies and Countervailing Measures reported on the work undertaken in the Committee pursuant to this mandate. The representatives of the United States, Colombia, Japan, Barbados and the European Communities spoke. The General Council took note of the report by the Chairman and of the statements.

Committee on Agriculture

Report on the follow-up to the recommendations of the Committee on Agriculture concerning implementation-related issues approved by the

Doha Ministerial Conference (WT/GC/M/76). At its meeting on 15 October 2002, the General Council considered a report by the Committee on Agriculture (G/AG/14) which was introduced by the Chairman of the Committee. The representatives of Brazil and Argentina spoke. The General Council took note of the statements and of the report by the Committee.

Committee on Anti-Dumping Practices

Report on matters referred to the Committee by the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/GC/M/77). At the General Council meeting on 10-12 and 20 December 2002, the Chairman of the Committee on Anti-Dumping Practices introduced the Committee's recommendations with regard to articles 18.6 and 5.8 of the Agreement on Implementation of Article VI of GATT 1994, and reported on the Committee's consideration of the issue relating to article 15 of the Agreement. The representatives of the Republic of Korea, Brazil, Chile, Colombia, India, the United States, Japan, Malaysia, Canada and Indonesia, and the Chairman spoke. The General Council took note of the report and of the statements, and approved the recommendation contained in document G/ADP/9. The General Council then took note of the recommendation contained in document G/ADP/10, as well as the report by the Chairman of the Committee relating to article 15 of the Anti-Dumping Agreement.

Committee on Market Access

At its meeting on 10-12 and 20 December 2002, the General Council considered a report by the Committee on Market Access (G/MA/119) which was introduced by the Chairman of the Committee. The representatives of Honduras, Jamaica and Mauritius spoke. The Chairman suggested that members might wish to reflect further over the end-of-year break on the various views that had been expressed on this matter, particularly with regard to the future course of action, and said that, as all delegations were aware, this issue might be raised again by any member in any WTO forum it deemed appropriate, including in the negotiations under the Doha agenda. The General Council took note of the report and of the statements.

Committee on Customs Valuation

At its meeting on 10-12 and 20 December 2002, the General Council considered a report by the Committee on Customs Valuation (G/VAL/50). The Chairman of the Committee introduced the report. The General Council took note of the report and of the progress to date and authorized the Committee to continue its work under the existing mandate and to report back to the General Council once its work had been completed.

Report of the Inter-Agency Panel (WT/GC/M/75, 76, 77). At its meeting on 8 and 31 July 2002, the General Council considered the report of the Inter-Agency Panel (WT/GC/62-G/AG/13). The representative of Japan, on behalf of the Chairman of the Inter-Agency Panel, introduced the Panel report. The representatives of Sri Lanka, Egypt, Jordan, Cuba, Pakistan, Japan, Mauritius and Tunisia, and the Chairman spoke. The General Council took note of the report and of the statements, and agreed to revert to this matter at its reconvened meeting on 31 July. At the reconvened meeting of the General Council on 31 July, the representatives of Canada, Mauritius, Japan, Egypt, Zambia (on behalf of the LDCs), the European Communities, Chile, Sri Lanka, the United States, Switzerland, Djibouti, Cuba, Hungary and Senegal, and the Chairman spoke. The Chairman proposed that at this stage the General Council should take note of the statements and agree to return to the matter at its next meeting and that, in order not to lose time, it should invite the Chairman of the Committee on Agriculture to consult with interested members on the way forward with regard to following up on the Panel's recommendations, especially with regard to paragraph 168 (b), and to report on the results of his consultations to the General Council at its next meeting. The General Council so agreed.

At the General Council meeting on 15 October 2002, the Chairman of the Committee on Agriculture reported on the results of his consultations. The representatives of Kenya (on behalf of the African Group) and Senegal, and the Chairman spoke. The General Council took note of the statements and of the report of the Inter-Agency Panel (WT/GC/62-G/AG/13 and Corr.1), and approved the recommendations contained in paragraph 168 of the report. With regard to the recommendations in paragraph 168 (a), (c) and (d), the General Council authorized its Chairman to write to IMF, the World Bank and the agencies members of the Integrated Framework for LDCs requesting them to review the Panel report as it related to the issues within their competence. Finally, with regard to the recommendation in paragraph 168 (b), the General Council approved the recommendation of the Committee on Agriculture that the question of feasibility of an ex ante financing mechanism aimed at food importers be pursued by the Committee, on the understanding that a proposal regarding the establishment of an ex ante financing mechanism would be submitted by the WTO net food-importing developing countries, and that a follow-up report concerning the discussion of the proposal would be submitted to the General Council following the regular meeting of the Committee in November.

At the General Council meeting on 10-12 and 20 December 2002, the Chairman of the Committee on Agriculture reported on his consultations on the follow-up to the recommendation in paragraph 168 (b) of the Inter-Agency Panel report. The representatives of Jordan, Cuba, Nigeria and Tunisia, and the Chairman spoke. The General Council took note of the report and of the statements and authorized the Agriculture Committee Chairman to continue his consultations with a view to preparing a deci-

sion by the Committee on the proposed ex ante financing mechanism at its regular meeting in March 2003, and to report back to the General Council on the outcome as soon as possible thereafter.

*Work programme on harmonizing rules of origin
(WT/GC/M/72, 75, 77)*

At its meeting on 19 and 20 December 2001, the General Council considered a report by the Chairman of the Committee on Rules of Origin (CRO) covering a review of progress made, identification of the scope of remaining issues and the future course of work for the conclusion of the harmonization work programme (G/RO/49). The Chairman of CRO, in introducing his report, outlined the results of his consultations since the circulation of his report regarding the future course of work on this matter. The representatives of the Republic of Korea, the Philippines, India, Norway, Thailand, Singapore, Brazil, New Zealand, Australia, the European Communities, Hungary, the United States, Mexico and Canada spoke. The Chairman proposed that CRO should hold two additional sessions in the first half of 2002 to resolve remaining issues. In that process, it might identify a limited number of core policy-level issues which in its view needed to be reported to the General Council for discussion and decision at that level. The outcome of the Committee's further work would be reported by the Chairman of CRO, on his own responsibility, to the General Council at its first regular meeting after the end of June 2002, at which point the matter would be in the hands of the General Council. The deadline for completion of the harmonization work programme would be extended to the end of 2002. The General Council took note of the statements and so agreed.

At its meeting on 8 and 31 July 2002, the General Council considered a report by the Chairman of the Committee (G/RO/52). The Vice-Chairman of the Committee introduced the report on behalf of the Chairman. The representatives of Japan, India, Chile, New Zealand, Switzerland, Brazil, the Philippines, Norway, China, Thailand, Australia, Singapore, the United States, Colombia, Pakistan and the European Communities, and the Chairman spoke. The Chairman proposed that the General Council should take note of the report and of the recommendations contained therein, as well as of the statements by members, and that it should agree to hold a first meeting on the 12 core policy-level issues identified in paragraph 5.1 of that report. That meeting would be preceded by informal consultations after the summer recess for the purpose of preparing and organizing the meeting. It was understood that these General Council-level meetings would deal with all of the issues identified by CRO in document G/RO/52. The General Council so agreed.

At the General Council meeting on 10-12 and 20 December 2002, the Chairman recalled that since July, the General Council had held two informal meetings to discuss the 12 crucial issues mentioned by the Chairman

of the Committee on Rules of Origin in his report. He recalled further that, at his request, both the Chairman and the Vice-Chairman of the Committee had recently held informal consultations on the outstanding core policy issues with a view to furthering this work as much as possible before the present meeting. The Vice-Chairman of CRO, on behalf of its Chairman, reported on progress in the harmonization work programme since July. The representatives of India, Brazil, the United States, Japan, Norway and Hong Kong, China, spoke. The Chairman said that in the light of the report of the Chairman of CRO, members had to face the fact that despite their best efforts to date, the deadline of end December 2002 for completing the harmonization work programme could not be met. He proposed that the General Council extend, to July 2003, the deadline for completion of negotiations on the core policy issues identified in the report to the General Council of 15 July 2002 (G/RO/52). He also proposed that following resolution of these core policy issues, the Committee on Rules of Origin complete its remaining technical work, including the work referred to in article 9.3 (b) of the Agreement on Rules of Origin, by 31 December 2003. The General Council took note of the statements and agreed to the Chairman's proposal.

Work programme on electronic commerce
(WT/GC/M/72, 74, 75, 76, 77)

At the General Council meeting on 19 and 20 December 2001, the Chairman proposed three elements with regard to future work on electronic commerce. The General Council took note of the statement and agreed to the Chairman's proposal.

At its meeting on 13 and 14 May 2002, the General Council heard a progress report by the Chairman. Deputy Director-General Andrew Stoler reported on the second dedicated discussion on cross-cutting issues under the auspices of the General Council, held on 6 May 2002. The representatives of Japan, Uruguay, Brazil, Panama, the United States, India, the European Communities, Australia, Singapore, Pakistan and Hong Kong, China, and the Chairman spoke. The Chairman said that he would consult with members on future work under the work programme, and report at the next General Council meeting. The General Council took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 8 and 31 July 2002, the General Council heard a progress report by the Chairman on the results of consultations by Deputy Director-General Stoler on the most appropriate way to continue the work on cross-cutting issues. Regarding the separate issue of the most appropriate institutional arrangements for handling the work programme as a whole, the Chairman invited delegations to reflect on this with a view to taking a decision at the General Council meeting in October, before which informal consultations would be held. The representatives of Taiwan,

Province of China, and the United States spoke. The General Council took note of the statements and agreed to revert to the question of appropriate institutional arrangements for the conduct of the work programme as a whole at its next meeting.

At the General Council meeting on 15 October 2002, the Chairman proposed, on the basis of consultations held by Deputy Director-General Stoler, that the General Council agree to maintain, for the duration of the work until the Fifth Ministerial Conference, the current arrangements for handling the work programme on electronic commerce as outlined by him. The General Council so agreed. The Chairman informed the General Council that at the consultations held by the Deputy Director-General, delegations had been in agreement with a notional schedule of future dedicated discussions on cross-cutting issues under the auspices of the General Council, which he read out. The General Council took note of this information.

At the General Council meeting on 10-12 and 20 December 2002, Deputy Director-General Rufus Yerxa reported on the third dedicated discussion on cross-cutting issues held under the auspices of the General Council on 25 October. The Chairman spoke. The General Council took note of the report by Deputy Director-General Yerxa and of the statement.

Work programme on small economies

Framework and procedures for the conduct of the work programme (WT/GC/M/73). At its meeting on 13 and 15 February and 1 March 2002, the General Council heard a report by its Chairman on consultations under way with regard to a possible framework for the conduct of this work programme, in which he indicated that more time would be needed for delegations to consider proposals only just circulated (WT/GC/W/468), and for the initial consultations to be widened.

The General Council agreed to the Chairman's proposal that it suspend its discussion on this item following his statement, that Deputy Director-General Ablassé Ouedraogo pursue consultations on this matter in order to reach agreement on the framework for the conduct of the work programme, and that Mr. Ouedraogo report at the end of the following week to the incoming Chairman of the General Council, who would set a time to resume the General Council's discussion on this item.

At the resumed meeting on 1 March 2002, the Chairman drew attention to a text that had resulted from the consultations held by Deputy Director-General Ouedraogo (WT/GC/W/469), and proposed that the General Council take note of the proposed framework and procedures for the conduct of the work programme on small economies contained in that document, following which action the substantive work on the work programme would begin in dedicated sessions of the Committee on Trade and Development as soon as possible. The General Council so agreed.²¹⁶

The representatives of Mauritius, Barbados, the United States, Malaysia, Guatemala, El Salvador, Egypt, Hungary, Paraguay, Sri Lanka, Georgia, Belize, Trinidad and Tobago, Jamaica, Lithuania, India, the European Communities, Saint Lucia (also on behalf of Dominica, Saint Kitts and Nevis, and Saint Vincent and the Grenadines), Bangladesh, Gabon, Bolivia and Macao, China, and Deputy Director-General Ouedraogo spoke. The General Council took note of the statements.

Reports (WT/GC/M/74, 75, 76, 77). At the General Council meeting on 13 and 14 May 2002, Deputy Director-General Ouedraogo, speaking on behalf of the Chairman of the Dedicated Sessions of the Committee on Trade and Development, reported on the first dedicated session of CTD on the work programme on small economies. The representative of Mauritius (on behalf of the co-sponsors of the work programme on small economies) spoke. The General Council took note of the statement and of the report by Deputy Director-General Ouedraogo on behalf of the Chairman of the dedicated sessions of CTD.

At the General Council meeting on 8 and 31 July 2002, the Chairman of the dedicated sessions of CTD reported on the Committee's activities on this matter. The representatives of Mauritius (on behalf of the small-economy WTO members) and the United States spoke. The General Council took note of the statements and of the report by the Chairman of the dedicated sessions of CTD.

At the General Council meeting on 15 October 2002, Deputy Director-General Kipkorir Aly Azad Rana, speaking on behalf of the Chairman of the dedicated sessions of CTD, reported on the Committee's activities on this matter, and indicated that the next dedicated session would be held in early November back to back with the "Geneva week" for non-resident WTO members and observers, as requested by the proponents of the work programme. The General Council took note of the report by Deputy Director-General Rana, on behalf of the Chairman of the dedicated sessions of CTD.

At its meeting on 10-12 and 20 December 2002, the General Council heard a progress report by Deputy Director-General Roderick Abbott on behalf of the Chairman of the dedicated sessions of CTD. The representatives of Japan and the United States, and the Chairman spoke. The General Council took note of the report by Deputy Director-General Abbott on behalf of the Chairman of the dedicated sessions of CTD and of the statements.

Work programme for least developed countries (WT/GC/M/73)

At the General Council meeting on 13 and 15 February and 1 March 2002, the Chairman of the Subcommittee on Least Developed Countries reported on the results of the Subcommittee's deliberations on this matter and introduced the work programme for least developed countries as agreed by the Subcommittee (WT/COMTD/LDC/11). The representatives of Uganda (on behalf of the LDCs) and Brazil, and the Director-General spoke. The

General Council took note of the statements and of the work programme and encouraged the Subcommittee to follow up on the work programme, taking into account the statements by delegations at the present meeting.

Subcommittee on Least Developed Countries

Recommendations for facilitating and accelerating the accession of LDCs to the WTO Agreement (WT/GC/M/77). At its meeting on 10-12 and 20 December 2002, the General Council considered a draft decision on guidelines to facilitate and accelerate negotiations with acceding LDCs, which had been agreed by the Subcommittee on Least Developed Countries at its meeting on 2 December (WT/COMTD/LDC/12). The Chairman of the Subcommittee introduced the draft decision. The General Council adopted the decision (WT/L/508). The representatives of the United States, Zambia (on behalf of the LDCs), Japan, the European Communities, India, Norway, Kenya (on behalf of the African Group), Canada, Hungary, China and Cuba, and the Chairman spoke. The General Council took note of the statements.

Issues affecting least developed countries

Interim report by the Director-General pursuant to paragraph 43 of the Doha Ministerial Declaration (WT/GC/M/77). At its meeting on 10-12 and 20 December 2002, the General Council considered an interim report by the Director-General pursuant to paragraph 43 of the Doha Ministerial Declaration (WT/GC/W/485). The Director-General introduced the report. The representatives of Djibouti, Japan, the European Communities, Zambia (on behalf of the LDCs), Haiti, the United States, Norway, Switzerland, Canada, Kenya, Benin and Guinea spoke. The General Council took note of the interim report by the Director-General and of the statements.

Implementation and adequacy of technical cooperation and capacity-building commitments in the Doha Ministerial Declaration

Interim report by the Director-General pursuant to paragraph 41 of the Doha Ministerial Declaration (WT/GC/M/77). At its meeting on 10-12 and 20 December 2002, the General Council considered an interim report by the Director-General pursuant to paragraph 41 of the Doha Ministerial Declaration (WT/GC/W/484). The Director-General introduced the report. The representatives of Japan, the European Communities, Egypt, Norway, India, Kenya, Djibouti, the United States, Thailand, Zambia, Pakistan, Jamaica, Canada, Morocco, Côte d'Ivoire, Nigeria, Mauritius, Cuba and Burkina Faso, and the Chairman spoke. The General Council took note of the Director-General's interim report and of the statements.

Council for TRIPS

Report on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/GC/M/77). Ministers at Doha recognized that members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making

effective use of compulsory licensing under the TRIPS Agreement, and instructed the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002 (WT/MIN(01)/DEC/2, para. 6).

At the General Council meeting on 10-12 and 20 December 2002, the General Council considered this matter.

On 10 December, the Chairman of the Council for TRIPS reported on that Council's work to date, and proposed that the General Council suspend its discussion on this item and revert to it at the end of its meeting. The General Council took note of the report by the Chairman of the Council for TRIPS and so agreed.

On 11 December, the Chairman of the Council for TRIPS provided an interim report on the basis of his assessment of developments. The Chairman spoke. The General Council took note of the statement, and agreed to suspend consideration of this item and revert to it subsequently in the light of the advice from the Chairman of the TRIPS Council, but in any event not later than 20 December.

At the resumed meeting on 20 December, the Chairman of the TRIPS Council said, *inter alia*, that the consultations had not led to a resolution of the coverage problem in paragraph 1 (a) of the Chairman's text of 16 December in regard to the so-called "scope of diseases" question. He proposed that the TRIPS Council be asked to resume work on this matter promptly at the beginning of 2003 to resolve the outstanding issues in the Chairman's 16 December text and to report to the General Council so that a decision implementing a solution to the problem identified in paragraph 6 of the Doha Declaration on TRIPS and Public Health would be taken at the first General Council meeting in 2003.

The representatives of the United States, Kenya (on behalf of the African Group), Brazil, India, China, Malaysia, Canada, Argentina, the Philippines, Botswana, Indonesia, Chile, Thailand, Cuba, Pakistan, Peru, Hungary, Taiwan, Province of China, the European Communities, Japan, Switzerland, the Czech Republic, Norway and Hong Kong, China, and the Holy See (as an observer) requested that their statements at the meeting of the TRIPS Council held just prior to the meeting of the General Council be reflected also in the records of the latter. The representatives of Kenya (on behalf of the African Group) and South Africa spoke. The General Council took note of the statements, including those made at the meeting of the TRIPS Council on 20 December, and invited the TRIPS Council to resume work on this matter promptly at the beginning of 2003 to resolve the outstanding issues in the Chairman's text of 16 December and to report to the General Council, so that a decision implementing a solution to the problem identified in paragraph 6 of the Doha Declaration on TRIPS and Public Health was taken at the first General Council meeting in 2003.

*Date and venue of the fifth session of the Ministerial Conference
(WT/GC/M/72,²¹⁷ 74²¹⁸)*

At its meeting on 19 and 20 December 2001, the General Council considered a communication from Mexico containing an offer by that Government to host the fifth session of the Ministerial Conference (WT/GC/55). The representatives of Mexico, Honduras (on behalf of the Latin American Group), Egypt, Qatar, the United States, Kenya, Botswana, Brazil, Israel, Kuwait, the European Communities, Canada, Lesotho, Singapore, Thailand, Turkey, Morocco, China, India, New Zealand, Australia and Côte d'Ivoire, and the Chairman spoke. The General Council took note of the statements and agreed that Mexico would be the venue of the fifth session of the Ministerial Conference.

At the General Council meeting on 13 and 14 May 2002, the Chairman reported on consultations he had been holding regarding the dates of the fifth session. The representative of Mexico informed the General Council that, having considered a number of sites which could provide the services and infrastructure required to carry out such a meeting, his Government had suggested that the Ministerial Conference be held in Cancún. Regarding possible dates for the meeting, and taking into account the views expressed in the consultations held by the Chairman, as well as logistics and other issues, his delegation proposed 10 to 14 September 2003. The General Council took note of the statements and of Mexico's choice of Cancún as the site for the fifth session, and agreed that the fifth session would be held from 10 to 14 September 2003.

Agreement on Textiles and Clothing

Major review of the implementation of the Agreement on Textiles and Clothing (ATC) during the second stage of the integration process pursuant to article 8.11 of ATC (WT/GC/M/72). At its meeting on 19 and 20 December 2001, the Interim Chairman of the Council for Trade in Goods (CTG) informed the General Council on the situation with regard to the major review of the implementation of ATC during the second stage of the integration process, and reaffirmed the commitment of the CTG Chairman to continue and intensify the consultation process in 2002 with a view to submitting a report for consideration by CTG at an early date. The representatives of India, China, Pakistan and Bangladesh spoke. The General Council took note of the statements.

Composition of the Textiles Monitoring Body (WT/GC/M/72). At its meeting on 19-20 December 2001, the General Council considered a draft decision on the composition of the Textiles Monitoring Body for the final three years of the Agreement on Textiles and Clothing, i.e., from 1 January 2002 to 31 December 2004 (WT/GC/W/465). The Interim Chairman of the Council for Trade in Goods spoke. The General Council took note of the statement and adopted the decision (WT/L/443).

Committee on Balance-of-Payments Restrictions

Consultations—Bangladesh (WT/GC/M/74, 77). At the General Council meeting on 13 and 14 May 2002, the representative of Romania, speaking on behalf of the Chairperson of the Committee on Balance-of-Payments Restrictions, introduced the Committee's report on its resumed consultations with Bangladesh (WT/BOP/R/60). The General Council took note of the statement and adopted the report.

At the General Council meeting on 10-12 and 20 December 2002, the representative of Romania, on behalf of the Chairperson of the Committee on Balance-of-Payments Restrictions, introduced the Committee's report on its consultations with Bangladesh (WT/BOP/R/64). The representatives of Bangladesh and the United States spoke. The General Council took note of the statements and adopted the report.

Notes on meetings (WT/GC/M/74, 77). At the General Council meeting on 13 and 14 May 2002, the representative of Romania, speaking on behalf of the Chairperson of the Committee on Balance-of-Payments Restrictions, introduced the Committee's report on its meeting of 27 February (WT/BOP/R/61). The General Council took note of the statement and of the information in document WT/BOP/R/61.

At the General Council meeting on 10-12 and 20 December 2002, the Chairman drew attention to the note on the Committee's meeting of 18 November (WT/BOP/R/69). The General Council took note of the information in document WT/BOP/R/69.

Committee on Budget, Finance and Administration

Reports (WT/GC/M/72, 74, 75, 76, 77). At its meeting on 19 and 20 December 2001, the General Council considered a report by the Committee on Budget, Finance and Administration (WT/BFA/56). The Chairman of the Committee introduced the report. The representatives of Pakistan, Japan, Canada, Brazil, the European Communities, the United States, India, China, Norway, Switzerland, the Philippines, the United Republic of Tanzania and the United Kingdom of Great Britain and Northern Ireland (also on behalf of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden) spoke. The General Council took note of the statements, approved the Budget Committee's specific recommendations in paragraphs 9, 10, 19, 22, 39, 48, 56, 59 and 65 of its report (WT/BFA/56) and adopted the report.

At the General Council meeting on 13 and 14 May 2002, the Chairman of the Committee on Budget, Finance and Administration reported on the Committee's meetings of 15 April and 8 May 2002. The General Council took note of the statement.

At its meeting on 8 and 31 July 2002, the General Council considered reports by the Committee on Budget, Finance and Administration (WT/

BFA/58 and 59). The Chairman of the Committee introduced the reports, and reported on the Committee's meeting of 5 July 2002. The General Council took note of the statement, approved the Budget Committee's specific recommendation in paragraph 9 of its report in document WT/BFA/58, and adopted the reports.

At its meeting on 15 October 2002, the General Council considered a report by the Committee on Budget, Finance and Administration (WT/BFA/60). The Chairman of the Committee introduced the report. The General Council took note of the statement and adopted the report.

At the General Council meeting on 10-12 and 20 December 2002, the Chairman drew attention to the recommendations of the Committee on Budget, Finance and Administration which had resulted from the Committee's extensive meetings held between October and December (WT/BFA/62). The Chairman of the Committee introduced the Committee's recommendations in document WT/BFA/62.

The Chairman of the General Council made a statement with regard to the Committee's work concerning the review of methodologies for future pay adjustments. The General Council took note of the statements by the Chairman of the Committee and by the Chairman of the General Council, approved the Committee's recommendations contained in document WT/BFA/62, and took note that the Committee would make a progress report in February 2003 on its work concerning the review of methodologies for future pay adjustments. The representatives of China, Chile, Djibouti, Haiti, Kenya (on behalf of the African Group), Taiwan, Province of China, Uruguay, Barbados, Zambia and the United States, and the Director-General and the Chairman spoke. The General Council took note of the statements.

Statement by the Committee Chairman in relation to pledges announced and payments received to finance the implementation of the WTO Secretariat Annual Technical Assistance Plan (WT/GC/M/75). At the General Council meeting on 8 and 31 July 2002, the Chairman of the Committee on Budget, Finance and Administration reported on pledges announced and payments received towards the Doha Development Agenda Global Trust Fund, and urged all donors who had not yet done so to transfer their promised contributions as quickly as possible. The representative of Japan spoke. The General Council took note of the statements.

Statement by the Committee Chairman regarding the Director-General's conditions of service (WT/GC/M/76). At the General Council meeting on 15 October 2002, the Chairman of the Committee on Budget, Finance and Administration drew attention to his 3 October letter to all delegations drawing their attention to a report he had made to the Budget Committee on 2 October regarding a proposed adjustment to the Director-General's salary package, which he outlined. The Chairman proposed that the General Council agree ad referendum to the terms of the Director-General's contract as outlined by the Chairman of the Committee on Budget, Finance and

Administration. If no WTO member indicated any reservations to him by close-of-business on 28 October, the Director-General's conditions of service would be considered agreed and a notice to this effect sent to members. The General Council took note of the statement and so agreed.²¹⁹

Waivers under article IX of the WTO Agreement

(a) *Transposition of schedules into the Harmonized System*

Nicaragua and Sri Lanka. At its meeting on 13 and 14 May 2002, the General Council considered requests by Nicaragua (G/L/515) and Sri Lanka (G/L/516) for extensions of waivers previously granted in connection with their implementation of the Harmonized System, and draft decisions to this effect (Nicaragua—G/C/W/351; Sri Lanka—G/C/W/352). The Chairman of the Council for Trade in Goods reported on the consideration of these requests by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decisions (Nicaragua—WT/L/467; Sri Lanka—WT/L/468).

Sri Lanka (WT/GC/M/76). At its meeting on 15 October 2002, the General Council considered a request by Sri Lanka (G/L/565) for an extension of its waiver previously granted in connection with its implementation of the Harmonized System, and a draft decision to this effect (G/C/W/415/Rev.1). The Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/492).

(b) *Introduction of the Harmonized System 1996 changes into WTO schedules of tariff concessions*

Argentina, Brazil, El Salvador, Israel, Malaysia, Morocco, Norway, Pakistan, Panama, Paraguay, Switzerland, Thailand and Venezuela (WT/GC/M/74). At its meeting on 13 and 14 May 2002, the General Council considered requests from Argentina (G/L/528), Brazil (G/L/511), El Salvador (G/L/514), Israel (G/L/513), Malaysia (G/L/535), Morocco (G/L/512/Rev.1), Norway (G/L/519), Pakistan (G/L/526), Panama (G/L/518), Paraguay (G/L/525), Switzerland (G/L/523), Thailand (G/L/524) and Venezuela (G/L/517) for extensions of waivers for the introduction of Harmonized System 1996 changes into schedules of tariff concessions, and related draft decisions (Argentina—G/C/W/362; Brazil—G/C/W/348; El Salvador—G/C/W/350; Israel—G/C/W/349 and Corr.1; Malaysia—G/C/W/364; Morocco—G/C/W/358; Norway—G/C/W/355 and Corr.1; Pakistan—G/C/W/365 and Corr.1; Panama—G/C/W/354 and Corr.1; Paraguay—G/C/W/357; Switzerland—G/C/W/356; Thailand—G/C/W/359; and Venezuela—G/C/W/353).

The Chairman of the Council for Trade in Goods reported on the consideration of these requests by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decisions (WT/L/464—Argentina; WT/L/454—Brazil; WT/L/456—El Salvador; WT/L/455—Israel; WT/L/465—Malaysia; WT/L/462—Morocco; WT/L/459—Norway; WT/L/466—Pakistan; WT/L/458—Panama; WT/L/461—Paraguay; WT/L/460—Switzerland; WT/L/463—Thailand; and WT/L/457—Venezuela).

Argentina, El Salvador, Israel, Morocco, Norway, Thailand and Venezuela (WT/GC/M/76). At its meeting on 15 October 2002, the General Council considered requests from Argentina (G/L/559), El Salvador (G/L/563), Israel (G/L/560), Morocco (G/L/568), Norway (G/L/562), Thailand (G/L/564) and Venezuela (G/L/561) for extensions of waivers for the introduction of Harmonized System 1996 changes into schedules of tariff concessions, and related draft decisions (Argentina—G/C/W/409 and Corr.1; El Salvador—G/C/W/413 and Corr.1; Israel—G/C/W/410 and Corr.1; Morocco—G/C/W/417; Norway—G/C/W/412 and Corr.1; Thailand—G/C/W/414 and Corr.1; and Venezuela—G/C/W/411 and Corr.1).

The Chairman of the Council for Trade in Goods reported on the consideration of these requests by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decisions (WT/L/485—Argentina; WT/L/486—El Salvador; WT/L/487—Israel; WT/L/488—Morocco; WT/L/489—Norway; WT/L/490—Thailand; and WT/L/491—Venezuela).

(c) *Introduction of the Harmonized System 2002 changes into WTO schedules of tariff concessions*

Argentina, Australia, Bulgaria, Canada, China, Colombia, Croatia, the Czech Republic, Estonia, the European Communities, Hungary, Iceland, India, Latvia, Lithuania, Malaysia, Mexico, New Zealand, Norway, the Republic of Korea, Romania, Singapore, Slovakia, Slovenia, Switzerland, Thailand, Turkey, the United States, Uruguay and Hong Kong, China (WT/GC/M/74). At its meeting on 13 and 14 May 2002, the General Council considered a draft decision (G/C/W/367/Rev.1) to waive obligations under article II of GATT 1994 for the members listed in the annex to the draft decision in relation to the introduction of the Harmonized System 2002 changes into WTO schedules of tariff concessions.

The Chairman of the Council for Trade in Goods reported on the consideration of this draft decision by that Council. The representatives of Romania and Brazil spoke. The General Council took note of the report and of the statements, including the statement by the Chairperson of the Market Access Committee at the Committee's meeting of 15 March 2002

referred to by Brazil and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/469).

Romania (WT/GC/M/75). At its meeting on 8 and 31 July 2002, the General Council considered a request by Romania (G/L/553) for a waiver for the introduction of the Harmonized System 2002 changes into WTO schedules of tariff concessions, and the related draft decision (G/C/W/383). The Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/477).

Argentina, Australia, Bulgaria, Canada, China, Croatia, the Czech Republic, Estonia, the European Communities, Hungary, Iceland, India, Latvia, Lithuania, Mexico, Nicaragua, Norway, the Republic of Korea, Romania, Singapore, Slovakia, Slovenia, Switzerland, Thailand, the United States, Uruguay and Hong Kong, China, and Macao, China (WT/GC/M/77). At its meeting on 10-12 and 20 December 2002, the General Council considered a draft decision (G/C/W/436 and Corr.1) to waive obligations under article II of GATT 1994 for the members listed in the annex to that decision in relation to the introduction of the Harmonized System 2002 changes into WTO schedules of tariff concessions. The Chairman, on behalf of the Chairman of the Council for Trade in Goods, reported on the consideration of the draft decision by the Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/511).

(d) *Renegotiation of schedule*

Zambia (WT/GC/M/74, 76). At its meeting on 13 and 14 May 2002, the General Council considered a request by Zambia (G/L/537) for an extension of a waiver previously granted in connection with the renegotiation of its schedule, and a draft decision to this effect (G/C/W/370). The Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/470).

At its meeting on 15 October 2002, the General Council considered a request by Zambia (G/L/567) for an extension of a waiver previously granted in connection with the renegotiation of its schedule, and a draft decision to this effect (G/C/W/416). The Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with

the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/493).

(e) *Colombia—Article 5.2 of the Agreement on Trade-Related Investment Measures (WT/GC/M/72)*

At its meeting on 19 and 20 December 2001, the General Council considered a request by Colombia (G/C/W/340) for a waiver from its obligations under article 5.2 of the Agreement on Trade-Related Investment Measures, and the related draft decision (G/C/W/343). The Interim Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The representative of the United States spoke. The General Council took note of the report and of the statement and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/441).

(f) *Cuba—Article XV:6 of GATT 1994 (WT/GC/M/72)*

At its meeting on 19 and 20 December 2001, the General Council considered a request by Cuba (G/C/W/303 and Corr.1) for an extension of a waiver previously granted in connection with its obligations under paragraph 6 of article XV of GATT 1994, and the related draft decision (G/C/W/308). The Interim Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/440).

(g) *Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation Agreement)*

Côte d'Ivoire (WT/GC/M/75). At its meeting on 8 and 31 July 2002, the General Council considered a request by Côte d'Ivoire (G/C/W/301 and Add.1 and 2) for a waiver from its obligations under the Agreement on Implementation of Article VII of GATT 1994, and the related draft decision (G/C/W/385). The Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/475).

Dominican Republic—Minimum values under the Agreement on Implementation of Article VII of GATT 1994 (WT/GC/M/72). At its meeting on 19 and 20 December 2001, the General Council considered a request by the Dominican Republic (G/C/W/286) for a waiver from its obligations

under the Agreement on Implementation of Article VII of GATT 1994, and the related draft decision (G/C/W/310). The Interim Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/442).

El Salvador (WT/GC/M/74, 75). At its meeting on 13 and 14 May 2002, the General Council considered a request by El Salvador (G/C/W/300/Rev.2) for extension of a waiver from its obligations under the Agreement on Implementation of Article VII of GATT 1994, and the related draft decision (G/C/W/300/Rev.2/Add.1/Corr.1). The Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/453).

At its meeting on 8 and 31 July 2002, the General Council considered a further request by El Salvador (G/C/W/372) for a waiver from its obligations under the Agreement on Implementation of Article VII of GATT 1994, and the related draft decision (G/C/W/388). The Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/476).

Haiti (WT/GC/M/72). At its meeting on 19 and 20 December 2001, the General Council considered a request by Haiti (G/C/W/256/Rev.1) for a waiver from its obligations under the Agreement on Implementation of Article VII of GATT 1994, and the related draft decision (G/C/W/326). The Interim Chairman of the Council for Trade in Goods reported on the consideration of this request by that Council. The General Council took note of the report and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/439).

(h) *Least developed countries—Obligations under article 70.9 of the TRIPS Agreement with respect to pharmaceutical products (WT/GC/M/75)*

At its meeting on 8 and 31 July 2002, the General Council considered a draft decision (IP/C/W/359) to waive from the obligations of least developed country members under article 70.9 of the TRIPS Agreement with respect to pharmaceutical products until 1 January 2016. The Chairman of the Council for TRIPS reported on the consideration of this waiver by that Council. The

representative of Zambia (on behalf of the LDCs) spoke. The General Council took note of the report and of the statement and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision (WT/L/478).

(i) *New EC special tariff arrangements to combat drug production and trafficking (WT/GC/M/75)*

At the General Council meeting on 8 and 31 July 2002, the Chairman said that, as delegations were aware, this waiver request was currently under consideration by the Council for Trade in Goods, in accordance with the procedures laid down in article IX (3) (b) of the WTO Agreement. Although that Council had not yet been able to submit a report, he had been informed that its Chairman was continuing to hold consultations with a view to finalizing the report. He would therefore encourage the Chairman of the Council for Trade in Goods and all delegations to persevere in their efforts to reach agreement as soon as possible. Taking into account the situation he had just described, he proposed that members not, on the present occasion, enter into a discussion of this topic, the positions on which were well known to all the parties. In this regard, he would therefore propose that the General Council take note of his statement and revert to the matter once the Council for Trade in Goods had submitted its report pursuant to article IX (3) (b). The General Council took note of the statement and so agreed.

(j) *Review of waivers pursuant to article IX:4 of the WTO Agreement (WT/GC/M/72, 76, 77)*

At its meeting on 19 and 20 December 2001, the General Council considered the following waivers for review under article IX.4:

- (i) EC—Autonomous preferential treatment to the countries of the Western Balkans (WT/L/380 and Corr.1); and
- (ii) Turkey—Preferential treatment for Bosnia and Herzegovina (WT/L/381).

In so doing, the General Council considered reports on the implementation of the waivers submitted by the European Communities and Turkey in documents WT/L/435 and WT/L/431, respectively. The Chairman spoke. The General Council took note of the statement and of the reports in documents WT/L/435 and 431.

At its meeting on 15 October 2002, the General Council considered the following waivers for review under article IX.4:

- (i) Canada—CARIBCAN (WT/L/185);
- (ii) Madagascar—Customs Valuation Agreement (WT/L/408);
- (iii) Switzerland—Preferences for Albania and Bosnia and Herzegovina (WT/L/406); and

- (iv) United States—Former Trust Territory of the Pacific Islands (WT/L/183).

In so doing, the General Council considered reports on the implementation of the waivers submitted by Canada, Switzerland and the United States in documents WT/L/483, WT/L/482 and WT/L/484 respectively. The representative of Paraguay and the Chairman spoke. The General Council took note of the statements and of the reports in documents WT/L/482, WT/L/483 and WT/L/484.

At its meeting on 10-12 and 20 December 2002, the General Council considered the following waivers for review pursuant to article IX.4 of the WTO Agreement:

- (i) Cuba—Article XV:6 of GATT 1994 (WT/L/440);
- (ii) Colombia—Extension of the application of article 5.2 of the Agreement on Trade-Related Investment Measures (WT/L/441);
- (iii) Dominican Republic—Minimum values under the Customs Valuation Agreement (WT/L/442);
- (iv) EC—Autonomous preferential treatment to the countries of the Western Balkans (WT/L/380);
- (v) EC—Transitional regime for the EC autonomous tariff rate quotas on imports of bananas (WT/L/437);
- (vi) EC—The African, Caribbean and Pacific States (ACP)—EC Partnership Agreement (WT/L/436);
- (vii) Turkey—Preferential treatment for Bosnia and Herzegovina (WT/L/381);
- (viii) United States—Caribbean Basin Economic Recovery Act (WT/L/104); and
- (ix) Preferential tariff treatment for least developed countries (WT/L/304).

In so doing, the General Council considered reports on the implementation of the waivers submitted by Cuba, Turkey, the United States, and the European Communities in documents WT/L/496, 503, 504, 499 and 498, respectively. The representatives of Honduras and Ecuador, and the Chairman spoke. The General Council took note of the statements and of the reports in documents WT/L/496, 498, 499, 503 and 504.

Accession matters

Armenia (WT/GC/M/77). At its meeting on 10-12 and 20 December 2002, the General Council considered the report of the Working Party on the Accession of Armenia (WT/ACC/ARM/23 and Add.1 and 2). The representative of Armenia (as an observer) and the representative of Australia,

on behalf of the Chairman of the Working Party, spoke. The General Council approved the text of the Protocol of Accession of Armenia (WT/L/506) and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the decision on the accession of Armenia (WT/L/506). The General Council then adopted the report of the Working Party as a whole (WT/ACC/ARM/23 and Add.1 and 2). In this context, the Chairman drew attention to the communication to the Director-General received from Armenia and circulated in WT/ACC/ARM/22 and, on behalf of the General Council and all WTO members, welcomed the accession of Armenia. The representatives of Armenia (as an observer), Indonesia (on behalf of the ASEAN members), Georgia, Slovakia (also on behalf of Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovenia), the European Communities, the United States, Paraguay (on behalf of the Latin American Group), Kyrgyzstan, Lesotho, Japan, India, Cyprus and Australia, and the Chairman spoke. The General Council took note of the statements and of the expressions of welcome and support.

The former Yugoslav Republic of Macedonia (WT/GC/M/76). At its meeting on 15 October 2002, the General Council considered the report of the Working Party established in December 1994 to examine the request of the former Yugoslav Republic of Macedonia for accession to the WTO Agreement (WT/ACC/807/27 and Add.1 and 2). The representative of the former Yugoslav Republic of Macedonia (as an observer) and the Chairman of the Working Party spoke. The General Council approved the text of the Protocol of Accession of the former Yugoslav Republic of Macedonia (WT/L/494) and, in accordance with the decision-making procedures under articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the Decision on the Accession of the Former Yugoslav Republic of Macedonia (WT/L/494). The General Council then adopted the report of the Working Party as a whole (WT/ACC/807/27 and Add.1 and 2). The representatives of Argentina, Turkey, Paraguay (on behalf of the Latin American Group), China, Slovakia (also on behalf of Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovenia), Croatia, the European Communities, Indonesia (on behalf of the ASEAN members), India, Slovenia, Albania, Bulgaria, Kenya (on behalf of the African Group) and the Federal Republic of Yugoslavia (as an observer), and the Chairman spoke. The General Council took note of the statements and of the expressions of welcome and support.

Islamic Republic of Iran (WT/GC/M/72, 73, 74, 75, 76, 77). At its meeting on 19 and 20 December 2001, the General Council again considered this matter. The representatives of the United States and Malaysia (on behalf of the Informal Group of Developing Countries) spoke. The General Council took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 13 and 15 February and 1 March 2002, the General Council again considered this matter. The representatives of the United States and Malaysia (on behalf of the Informal Group of Developing Countries) spoke. The General Council took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 13 and 14 May 2002, the General Council again considered this matter. The representatives of the United States and Malaysia (on behalf of the Informal Group of Developing Countries) spoke. The General Council took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 8 and 31 July 2002, the General Council again considered this matter. The representatives of the United States and Malaysia (on behalf of the Informal Group of Developing Countries) and the European Communities spoke. The General Council took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 15 October 2002, the General Council again considered this matter. The representatives of the United States and Malaysia (on behalf of the Informal Group of Developing Countries) spoke. The General Council took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 10-12 and 20 December 2002, the General Council again considered this matter. The representatives of the United States and Malaysia (on behalf of the Informal Group of Developing Countries) spoke. The General Council took note of the statements and agreed to revert to this matter at its next meeting.

Nepal (WT/GC/M/76). At its meeting on 15 October 2002, the Chairman informed the General Council that Mr. Girard (Switzerland) had agreed to chair the Working Party on Accession of Nepal following the departure of the former Chairman, Mr. Farrell (New Zealand). The General Council took note of this information.

Saudi Arabia (WT/GC/M/73). At its meeting on 13 and 15 February and 1 March 2002, the Chairman said, *inter alia*, that as a result of his recent consultations, he believed that consensus could be reached shortly on the appointment of Mr. Akram (Pakistan) who had offered to make himself available to chair the Working Party on Accession of Saudi Arabia following an indication by its present Chairman, Mr. Weekes (Canada), that he would no longer be able to serve in this post. He or the new General Council Chairman would complete these consultations and, if there were no objections, designate the Chairman of the Working Party and so inform the General Council in writing.²²⁰ The General Council took note of the statement.

Retreat for WTO permanent representatives (WT/GC/M/75)

At the General Council meeting on 8 and 31 July 2002, the Chairman informed delegations of his intention to organize a one-day retreat for

all permanent representatives of WTO members in October, and provided background and organizational details regarding this event. The General Council took note of the statement.

Scheduling of WTO meetings (WT/GC/M/73, 74)

At the General Council meeting on 13 and 15 February and 1 March 2002, Deputy Director-General Miguel Rodríguez Mendoza, recalling that he had been asked by the Director-General to examine the issue of scheduling of meetings, reported his findings on the current situation and made several specific suggestions on how to address concerns expressed by delegations, including that the Secretariat should continue to monitor the situation regularly. The Chairman spoke. The General Council took note of the statements.

At the General Council meeting on 13 and 14 May 2002, Deputy Director-General Rodríguez Mendoza reported on the situation regarding the scheduling of WTO meetings for 2002. The representative of Bangladesh and the Chairman spoke. The General Council took note of the statements.

Better management of WTO meetings (WT/GC/M/76)

At the General Council meeting on 15 October 2002, the Chairman, recalling that a prominent topic at recent meetings had been the sheer volume of meetings that delegations and the Secretariat had to deal with and the need to manage this in the most efficient way possible, said, inter alia, that there was a wider need to think creatively and work cooperatively to lighten the burden on all. He indicated that for the December General Council meeting, which had a very heavy agenda, he was considering encouraging delegations to show discipline and cooperation in limiting the length of their interventions, and suggested some ideas for members to consider in this regard. The General Council took note of the statement.

International Trade Centre UNCTAD/WTO (WT/GC/M/76)

At its meeting on 15 October 2002, the General Council considered the report of the Joint Advisory Group of the International Trade Centre UNCTAD/WTO on its thirty-fifth session (ITC/AG(XXXV)/191). The Chairman recalled that in keeping with customary practice, this report had been considered initially by the Committee on Trade and Development (CTD) at its meeting on 1 July 2002 and was before the General Council for formal adoption. Deputy Director-General Rana, speaking on behalf of the Chairman of CTD, reported on the Committee's discussion of this report. The representatives of Egypt and China spoke.

The Chairman said that he had been informed that the issue of translation of ITC documentation into two additional languages would be taken

up for consideration by the Committee on Budget, Finance and Administration at its meeting on 18 October in the context of considering the 2003 draft budget. He therefore proposed that the General Council await the Budget Committee's consideration of this issue before reverting to it in the General Council. The General Council took note of the report and of the statements, and agreed to the Chairman's proposal.

WTO Pension Plan

Annual Reports of the Management Board (WT/GC/M/72, 77). At its meeting on 19 and 20 December 2001, the General Council considered the Annual Report of the Management Board of the WTO Pension Plan for 2000 (WT/GC/W/463 and Corr.1). The Chairman of the WTO Pension Plan Management Board introduced the report. The General Council took note of the statement and of the Annual Report of the Management Board for 2000 in WT/GC/W/463 and Corr.1.

At its meeting on 10-12 and 20 December 2002, the General Council considered the Annual Report of the Management Board of the WTO Pension Plan for 2001 (WT/L/497). The Chairman of the WTO Pension Plan Management Board introduced the report. The Chairman spoke. The General Council took note of the statements and of the Annual Report of the Management Board for 2001 in WT/L/497.

Agreement on the transfer of pension rights of participants in the WTO Pension Plan and in the Pension Scheme of the Organization for Economic Cooperation and Development (WT/GC/M/72). At its meeting on 19 and 20 December 2001, the General Council considered an agreement on the transfer of pension rights of participants in the WTO Pension Plan and in the Pension Scheme of the Organization for Economic Cooperation and Development (WT/GC/W/462). The Chairman of the WTO Pension Plan Management Board introduced the transfer agreement. The representative of India and the Chairman of the WTO Pension Plan Management Board spoke. The General Council took note of the statements and concurred with the transfer agreement (WT/L/446).

Agreements on the transfer of pension rights between the Pension Plan of WTO and the pension schemes of other Coordinated Organizations²²¹ (WT/GC/M/77). At its meeting on 10-12 and 20 December 2002, the General Council considered agreements on the transfer of pension rights of participants in the WTO pension plan and in the pension schemes of other Coordinated Organizations (WT/GC/W/483). The Chairman of the WTO Pension Plan Management Board introduced the transfer agreements. The General Council took note of the statement and concurred with the transfer agreements (WT/L/513).

Election of the Chairman, members and alternates of the Management Board of the WTO Pension Plan (WT/GC/M/75). At its meeting on 8 and 31 July 2002, the General Council considered a proposal by its Chairman

regarding a slate of names for election to the Management Board (WT/GC/W/474). The General Council agreed to the election of the proposed candidates to the Management Board for a three-year term (WT/L/474).

Council for Trade in Goods

During the year 2002, the Council for Trade in Goods (CTG) met eight times in formal session.

Recommendations for appropriate action regarding proposals contained in paragraphs 4.4 and 4.5 of the Doha Ministerial Decision on Implementation-Related Issues and concerns relating to the Agreement on Textiles and Clothing (WT/GC/M/75). At the General Council meeting on 8 and 31 July 2002, the Chairman of CTG, reporting on the results of the Council's examination of these proposals, said, inter alia, that as a result of fundamental differences between the views and understandings of the restraining members and those of the developing country exporting members on both the contents of the report and the recommendations, the required consensus on the report and on the recommendations had not been reached. In view of this, there had been no alternative but to conclude the exercise without results. Consequently, he was not in a position to present a report with recommendations to the General Council. The representatives of Pakistan, China, Brazil, Bangladesh, the European Communities, Thailand (speaking also on behalf of Indonesia), Panama, India, the United States, Canada, Bolivia, Colombia and Hong Kong, China, and the Chairman spoke. The Chairman proposed, in view of the situation and having examined various possible options, that the General Council take note of the statement by the Chairman of CTG and of those by delegations, on the understanding that this would not prejudice the various positions held by members, which would be duly reflected in the minutes of the present meeting. For his part, he would inform the Chairman in detail, who would no doubt wish to examine the situation more in depth with regard to this matter. He was convinced that all members would use the summer break to continue to reflect on the various views that had been expressed. The General Council so agreed.

Council for Trade in Services

The Council for Trade in Services held six formal meetings during 2002. Reports of the meetings are contained in documents S/C/M/58 to 64. The Council also held one special meeting dedicated to the review of air transport under the Annex on Air Transport Services, the report of which is contained in document S/C/M/62. During the period the Council addressed the following matters:

Procedures for the termination, reduction and rectification of article II (MFN) exemptions. At its meeting of 5 June 2002, the Council adopted the procedures for the termination, reduction and rectification of article II (MFN) exemptions (document S/L/106).

Proposals for a technical review of GATS provisions—Article XX:2. In the light of its discussions held at the meeting on 19 March 2002, the Council agreed to focus its consideration of this item on article XX:2, which was one of the provisions of the GATS which some members had earlier proposed to be the object of technical review. The Secretariat produced two notes, the first on the drafting history of this provision, JOB(02)/89, presented in July, and the second a consideration of some practical examples of cases where scheduled commitments might lack clarity, JOB(02)/153, discussed in October.

Transitional review under section 18 of the Protocol of Accession of the People's Republic of China. At its meeting held on 25 October 2002, the Council for Trade in Services conducted and concluded the first transitional review under section 18 of the Protocol of Accession of the People's Republic of China. The Council took note of the report from the Committee on Trade in Financial Services on its review, contained in document S/FIN/7, which formed part of the Services Council's report on this matter to the General Council, contained in document S/C/15.

Negotiations under article X of GATS (Emergency Safeguards)—Extension of the deadline for negotiations. At a special meeting held on 15 March 2002, the Council received a communication from the Chair of the Working Party on GATS Rules proposing to extend the deadline on the negotiations under article X (Emergency Safeguard Measures). The Council adopted the Fourth Decision on Negotiations on Emergency Safeguard Measures (S/L/102), which extended the deadline for negotiations to 15 March 2004.

Other issues addressed by the Council for Trade in Services. At its meeting held on 19 March 2002, the Council continued its discussions on the review of the Understanding of Account rates, as provided for in paragraph 7 of the report of the Group on Basic Telecommunications contained in document S/GBT/4. In subsequent meetings the Council decided to reopen the Fourth Protocol to GATS relating to basic telecommunications for acceptance by Papua New Guinea as well as the Fifth Protocol to GATS relating to financial services for acceptance by the Republic of Bolivia. At three meetings, discussions were held under item "Implementation of commitments by the People's Republic of China—Statement by the United States".

NOTES

¹ For detailed information, see *The United Nations Disarmament Yearbook*, vol. 27: 2002 (United Nations publication, Sales No. E.03.IX.1).

² United Nations, *Treaty Series*, vol. 729, p. 159.

- ³ United Nations, *Treaty Series*, vol. 944, p. 13.
- ⁴ Treaty on Further Reduction and Limitation of Strategic Offensive Arms: *The United Nations Disarmament Yearbook*, vol. 18: 1993 (United Nations publication, Sales No. E.94.IX.1), appendix II.
- ⁵ The G-8 comprise Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.
- ⁶ *International Legal Materials*, vol. 41, No. 4 (July 2002), p. 799.
- ⁷ See Netherlands Ministry of Foreign Affairs website: www.minbuza.nl.
- ⁸ INFCIRC/540 (Corrected).
- ⁹ General Assembly resolution 2826 (XXVI), annex.
- ¹⁰ United Nations, *Treaty Series*, vol. 1974, p. 45.
- ¹¹ S/1999/356, annex I.
- ¹² S/1999/94, annex.
- ¹³ S/2003/232, annex.
- ¹⁴ S/2002/515, annex.
- ¹⁵ See General Assembly resolution 56/24 P.
- ¹⁶ See General Assembly resolution 56/24 U.
- ¹⁷ United Nations, *Treaty Series*, vol. 1342, p. 137.
- ¹⁸ See CCW/CONF.II/2 and Corr.I, part II.
- ¹⁹ United Nations, *Treaty Series*, vol. 2056, p. 211.
- ²⁰ See APLC/MSP.4/2002/1.
- ²¹ CCW/CONF.I/16 (Part I), annex B.
- ²² See CCW/AP.II/CONF.4/3 (Part I).
- ²³ See A/57/221 and corrigenda and addenda.
- ²⁴ The members of the Mano River Union are Guinea, Liberia and Sierra Leone.
- ²⁵ ECOWAS had extended its moratorium in July 2001 for a period of three years.
- ²⁶ United Nations, *Treaty Series*, vol. 634, p. 281.
- ²⁷ See the report of the Secretary-General on the Regional Centre (A/57/116).
- ²⁸ See the report of the Secretary-General (A/57/260).
- ²⁹ Formerly the Conference on Security and Cooperation in Europe (CSCE).
- ³⁰ The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement) was signed on 14 December 1995, in Paris, between the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, on the basis of which the war in Bosnia and Herzegovina was ended.
- ³¹ See A/50/1027.
- ³² Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia.
- ³³ United Nations, *Treaty Series*, vol. 1833, p. 3.
- ³⁴ See also section 8 below on legal questions dealt with by the Sixth Committee of the General Assembly and by ad hoc legal bodies.
- ³⁵ See A/57/273-S/2002/875.
- ³⁶ A/C.1/57/L.14.
- ³⁷ United Nations, *Treaty Series*, vol. 1155, p. 331.
- ³⁸ For the report of the Legal Subcommittee, see A/AC.105/787.

³⁹ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, of 1967 (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 of 1968 (General Assembly resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects of 1972 (General Assembly resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space of 1975 (General Assembly resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of 1979 (General Assembly resolution 34/68, annex).

⁴⁰ A/AC.105/769 and Corr.1.

⁴¹ A/AC.105/C.2/2002/CRP.10.

⁴² A/AC.105/C.2/2002/CRP.3.

⁴³ A/AC.105/C.2/L.232.

⁴⁴ A/AC.105/768.

⁴⁵ A/AC.105/C.2/L.234.

⁴⁶ A/AC.105/787, appendix.

⁴⁷ A/57/767.

⁴⁸ For the report of the session, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 25 (A/57/25)*.

⁴⁹ United Nations, *Treaty Series*, vol. 1771, p. 107.

⁵⁰ FCCC/CP/1997/7/Add.1, decision 1/CP.3.

⁵¹ United Nations, *Treaty Series*, vol. 1954, p. 3.

⁵² A/57/177.

⁵³ United Nations, *Treaty Series*, vol. 1760, p. 79.

⁵⁴ A/57/220.

⁵⁵ See UNEP/CBD/ExCop/1/3 and Corr.1, part two, annex.

⁵⁶ *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

⁵⁷ *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum).

⁵⁸ *Ibid.*, chap. I, resolution 1, annex.

⁵⁹ *Ibid.*, resolution 2, annex.

⁶⁰ See General Assembly resolution 55/2.

⁶¹ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigendum), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

⁶² A/57/158 and Add.1 and 2.

⁶³ Convention: General Assembly resolution 55/25, annex I; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: General Assembly resolution 55/25, annex II; Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime: General Assembly resolution 55/255.

⁶⁴ E/CN.15/2002/10.

⁶⁵ *Official Records of the Economic and Social Council, 2002, Supplement No. 10* and corrigendum (E/2002/30 and Corr.1).

⁶⁶ *Ibid.*, chap. VII.

⁶⁷ A/57/153.

⁶⁸ A/57/154.

⁶⁹ A/57/170.

⁷⁰ United Nations, *Treaty Series*, vol. 1249, p. 13.

⁷¹ *Ibid.*, vol. 1577, p. 3.

⁷² General Assembly resolution 54/4, annex.

⁷³ General Assembly resolution 54/263, annex II.

⁷⁴ A/57/171.

⁷⁵ See General Assembly resolution S-20/2, annex.

⁷⁶ General Assembly resolution 54/132, annex.

⁷⁷ General Assembly resolution S-20/3, annex.

⁷⁸ The more recent United Nations Conventions include Single Convention on Narcotic Drugs of 1961; Convention on Psychotropic Substances of 1971; Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961; Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961, of 1975; and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

⁷⁹ See *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.

⁸⁰ See General Assembly resolution S-17/2, annex.

⁸¹ United Nations, *Treaty Series*, vol. 993, p. 3.

⁸² *Ibid.*, vol. 999, p. 171.

⁸³ *Ibid.*

⁸⁴ General Assembly resolution 44/128, annex.

⁸⁵ United Nations, *Treaty Series*, vol. 660, p. 195.

⁸⁶ See CERD/SP/45, annex.

⁸⁷ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 18* and corrigendum (A/56/18 and Corr.1).

⁸⁸ *Ibid.*, *Fifty-seventh Session, Supplement No. 18* (A/57/18).

⁸⁹ A/57/334.

⁹⁰ See A/CONF.189/12 and Corr.1, chap. I.

⁹¹ See A/57/204.

⁹² See CEDAW/SP/1995/2.

⁹³ A/57/406 and Corr.1.

⁹⁴ United Nations, *Treaty Series*, vol. 1465, p. 85.

⁹⁵ See CAT/SP/1992/L.1.

⁹⁶ For the text of the Optional Protocol, see chap. IV of this volume.

⁹⁷ See CRC/SP/1995/L.1/Rev.1.

⁹⁸ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 14* and corrigendum (A/57/41 and Corr.1).

- ⁹⁹ A/57/295.
- ¹⁰⁰ General Assembly resolution 45/158.
- ¹⁰¹ A/57/476.
- ¹⁰² See A/57/56 and A/57/399 and Corr.1.
- ¹⁰³ A/57/138.
- ¹⁰⁴ E/CN.4/2000/46 and Add.1.
- ¹⁰⁵ A/53/293 and Add.1.
- ¹⁰⁶ A/56/207 and Add.1.
- ¹⁰⁷ General Assembly resolution 217 A (III).
- ¹⁰⁸ United Nations, *Treaty Series*, vol. 189, p. 137.
- ¹⁰⁹ *Ibid.*, vol. 606, p. 267.
- ¹¹⁰ *Ibid.*, vol. 360, p. 117.
- ¹¹¹ *Ibid.*, vol. 989, p. 175.
- ¹¹² A/57/324.
- ¹¹³ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 12* (A/57/12).
- ¹¹⁴ *Ibid.*, *Supplement No. 12A* (A/57/12/Add.1).
- ¹¹⁵ See A/57/379-S/2002/985.
- ¹¹⁶ See A/57/163-S/2002/733.
- ¹¹⁷ See A/57/491, A/57/492 and Corr.1 and A/57/493.
- ¹¹⁸ United Nations, *Treaty Series*, vol. 1833, p. 3.
- ¹¹⁹ General Assembly resolution 48/263, annex.
- ¹²⁰ A/CONF.164/37.
- ¹²¹ SPLOS/25.
- ¹²² International Seabed Authority document ISBA/4/A/8, annex.
- ¹²³ A/57/57 and Add.1.
- ¹²⁴ E/CN.17/2002/PC.2/3, annex.
- ¹²⁵ See UNEP/CBD/COP/5/23, annex III.
- ¹²⁶ See UNEP/CBD/COP/6/20, annex I.
- ¹²⁷ *International Fisheries Instruments with Index* (United Nations publication, Sales No. E.98.V.11), sect. III.
- ¹²⁸ Contentious cases before the ICJ are presented when some action was taken by the Court during 2002. For detailed information, see *Yearbook of the International Court of Justice 2001-2002*, No. 56, and *Yearbook of the International Court of Justice 2002-2003*, No. 57.
- ¹²⁹ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 4* and corrigendum (A/54/4 and Corr.1).
- ¹³⁰ For the membership of the International Law Commission, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), chap. I, sect. A.
- ¹³¹ For detailed information, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10).
- ¹³² A/CN.4/526 and Add.1 to 3.
- ¹³³ A/CN.4/514 and Corr.1 and 2 (Spanish only).

¹³⁴ A/CN.4/523 and Add.1.

¹³⁵ A/CN.4/525 and Add.1 and 2 and Corr.1, Corr.2 (Arabic and English only) and Add.1.

¹³⁶ A/CN.4/524.

¹³⁷ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 22 (A/57/22)*.

¹³⁸ For the membership of the United Nations Commission on International Trade Law, see *ibid.*, *Supplement No. 17 (A/57/17)*, chap. II, sect. B.

¹³⁹ For detailed information, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17 (A/57/17)*.

¹⁴⁰ For the text, see below, in the “Consideration by the General Assembly” section.

¹⁴¹ A/CN.9/508.

¹⁴² A/CN.9/504.

¹⁴³ A/CN.9/507.

¹⁴⁴ A/CN.9/511.

¹⁴⁵ See A/CN.9/511, paras. 126-127, and A/CN.9/512, para. 88.

¹⁴⁶ A/CN.9/WG.VI/WP.2 and addenda 1 to 12.

¹⁴⁷ A/CN.9/WG.VI/WP.3.

¹⁴⁸ A/CN.9/509.

¹⁴⁹ A/CN.9/510.

¹⁵⁰ A/CN.9/WG.III/WP.21.

¹⁵¹ *Ibid.*, Add.1.

¹⁵² A/CN.9/505.

¹⁵³ A/CN.9/516.

¹⁵⁴ States wishing to enact this Model Law to apply to domestic as well as international conciliation may wish to consider the following changes to the text: delete the word “international” in paragraph 1 of article 1; and delete paragraphs 4, 5 and 6 of article 1.

¹⁵⁵ The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

¹⁵⁶ The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article [...] Suspension of limitation period

1. When the conciliation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the conciliation is suspended.

2. Where the conciliation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the conciliation ended without a settlement agreement.

¹⁵⁷ When implementing the procedure for enforcement of settlement agreements, an enacting State may consider the possibility of such a procedure being mandatory.

¹⁵⁸ E/AC.51/2002/5, recommendation 15.

¹⁵⁹ United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

¹⁶⁰ *Ibid.*, vol. 1125, Nos. 17512 and 17513.

¹⁶¹ A/57/99 and Corr.1 and Add.1 and 2 and A/INF/56/6 and Add.1.

¹⁶² *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 26 (A/57/26)*.

¹⁶³ *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.1.5), sect. A.

¹⁶⁴ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.E.

¹⁶⁵ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 33 (A/57/33)*.

¹⁶⁶ S/2002/70; see *Resolutions and Decisions of the Security Council, 1 January 2001–31 July 2002*.

¹⁶⁷ A/AC.182/2000/INF/2.

¹⁶⁸ A/57/183 and Corr.1 and Add.1.

¹⁶⁹ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37 and corrigendum (A/57/37 and Corr.1)*.

¹⁷⁰ A/C.6/57/L.9.

¹⁷¹ Resolution 52/164, annex.

¹⁷² Resolution 54/109, annex.

¹⁷³ United Nations, *Treaty Series*, vol. 2051, p. 363.

¹⁷⁴ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 51 (A/57/51)*.

¹⁷⁵ A/C.6/57/L.4.

¹⁷⁶ For detailed information, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 14 (A/57/14)*, covering the period from 1 July 2000 to 30 June 2002.

¹⁷⁷ A/57/479.

¹⁷⁸ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 14 (A/57/14)*.

¹⁷⁹ The order of the organizations reflects the chronological order, from earlier to most recent, of the effective date the United Nations entered into a relationship with the Organization. All the organizations listed here are United Nations specialized agencies, except for IAEA and WTO, which are autonomous intergovernmental organizations that work in cooperation with the United Nations and are listed last.

¹⁸⁰ ILC, 90th session, Geneva, 2002, *Record of Proceedings*, Nos. 2 and 20; English, French, Spanish. ILO, *Official Bulletin*, vol. LXXXV, 2002, Series A, No. 2, p. 123; English, French, Spanish.

¹⁸¹ ILO, *Official Bulletin*, vol. LXXXV, 2002, Series A, No. 2, p. 90; English, French, Spanish. 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 *single discussion* procedure. Regarding preparatory work, see: ILC, 90th session, Geneva, 2002, reports V (1) and (2A and 2B); Arabic, Chinese, English, French, German, Russian, Spanish; ILC, 90th session, Geneva, 2002, *Record of Proceedings*, No. 24, 24A and 24B.

¹⁸² ILO, *Official Bulletin*, vol. LXXXV, 2002, Series A, No. 2, p. 100; English, French, Spanish. Information on the preparatory work for the adoption of these instruments is given in order to facilitate reference work. This instrument has been adopted using the *double discussion* procedure. Regarding preparatory work, see: *First discussion*: ILC, 89th session, Geneva, 2001, reports V (1) and (2); Arabic, Chinese, English, French, German, Russian, Spanish; ILC, 89th session, Geneva, 2001, *Record of Proceedings*, No. 18; English, French, Spanish; *Second discussion*: ILC, 90th session, Geneva, 2002, report IV (1) and reports IV (2A and 2B); Arabic, Chinese, English, French, German, Russian, Spanish; ILC, 90th session, Geneva, 2002, *Record of Proceedings*, No. 23 and 23A; English, French, Spanish.

¹⁸³ ILC, 90th session, Geneva, 2002, *Record of Proceedings*, No. 28 (Part Three); English, French, Spanish.

¹⁸⁴ This report has been published as report III (Part 1) to the 91st session of the Conference (2003) and comprises two volumes: Vol. 1A, *General Report and Observations concerning particular countries* (report III (Part 1A)); English, French, Spanish) and Vol. 1B, *General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949* (report III (Part 1B)); English, French, Spanish.

¹⁸⁵ GB.283/17/1 and GB.285/19.

¹⁸⁶ ILO, *Official Bulletin*, vol. LXXXV, 2002, Series B, No. 1; English, French, Spanish.

¹⁸⁷ *Ibid.*, No. 2; English, French, Spanish.

¹⁸⁸ *Ibid.*, No. 3; English, French, Spanish.

¹⁸⁹ GB.283/WP/SDG/1(Rev.), GB.283/WP/SDG/2, GB.283/WP/SDG/3 and GB.283/WP/SDG/3/1; English, French, Spanish.

¹⁹⁰ GB.285/WP/SDG/2, GB.285/WP/SDG/3/1; English, French, Spanish.

¹⁹¹ GB.283/LILS/WP/PRS/1/1, GB.283/LILS/WP/PRS/1/2, GB.283/LILS/WP/PRS/3, GB.283/LILS/WP/PRS/4; English, French, Spanish.

¹⁹² Cf. annex 1, Translation of the preliminary draft Convention title in the six working languages of UNESCO General Conference.

¹⁹³ The reports of the Legal Committee are contained in documents LEG 84/14 and LEG 85/11.

¹⁹⁴ Reproduced in IAEA document INFCIRC/274/Rev.1.

¹⁹⁵ Reproduced in IAEA document INFCIRC/335.

¹⁹⁶ Reproduced in IAEA document INFCIRC/336.

¹⁹⁷ Reproduced in IAEA document INFCIRC/500.

¹⁹⁸ Reproduced in IAEA document INFCIRC/500/Add.3.

¹⁹⁹ Reproduced in IAEA document INFCIRC/402.

²⁰⁰ Reproduced in IAEA document INFCIRC/449.

²⁰¹ Reproduced in IAEA document INFCIRC/546.

²⁰² Reproduced in IAEA document INFCIRC/566.

²⁰³ Reproduced in IAEA document INFCIRC/567.

²⁰⁴ Reproduced in IAEA document INFCIRC/377.

²⁰⁵ Reproduced in IAEA document INFCIRC/167/Add.20.

²⁰⁶ Reproduced in IAEA document INFCIRC/582.

²⁰⁷ Reproduced in IAEA document INFCIRC/613/Add.1.

²⁰⁸ Reproduced in IAEA document INFCIRC/607.

²⁰⁹ Reproduced in IAEA document INFCIRC/615.

²¹⁰ Reproduced in IAEA document INFCIRC/610.

²¹¹ Reproduced in IAEA document INFCIRC/614.

²¹² Reproduced in IAEA document INFCIRC/369/Add.1.

²¹³ Reproduced in IAEA document INFCIRC/541/Add.1.

²¹⁴ Reproduced in IAEA document INFCIRC/615/Add.1.

²¹⁵ Reproduced in IAEA document INFCIRC/394/Add.1.

²¹⁶ The framework and procedures as taken note of by the General Council were circulated as WT/L/447.

²¹⁷ Carried in General Council minutes as “Venue of the Fifth Session of the Ministerial Conference—Communication from Mexico”.

²¹⁸ Carried in General Council minutes as “Date of the Fifth Session of the Ministerial Conference”.

²¹⁹ No reservations having been received by the Chairman, the Director-General’s conditions of service were thereby considered agreed. A notice to this effect was circulated to members in WT/GC/67.

²²⁰ In the light of further consultations, the Chairman informed members in a communication dated 13 March 2002 (WT/GC/59) that Mr. Akram (Pakistan) would serve as the new Chairman of this Working Party.

²²¹ The Coordinated Organizations include the Council of Europe, the European Centre for Medium-Range Weather Forecasts (ECMWF), the European Space Agency (ESA), the North Atlantic Treaty Organization (NATO), the Organization for Economic Cooperation and Development (OECD) and the Western European Union (WEU).

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERN- MENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.¹ DONE AT NEW YORK ON 18 DECEMBER 2002²

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

PART I

GENERAL PRINCIPLES

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other

cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

SUBCOMMITTEE ON PREVENTION

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by

its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

MANDATE OF THE SUBCOMMITTEE ON PREVENTION

Article 11

The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

- (i) Advise and assist States Parties, when necessary, in their establishment;
- (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
- (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted

to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

NATIONAL PREVENTIVE MECHANISMS

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for

the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V

DECLARATION

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI

FINANCIAL PROVISIONS

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

FINAL PROVISIONS

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is 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.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication 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 two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been 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 amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND
CULTURAL ORGANIZATION

Convention on the Protection of the Underwater Cultural
Heritage.³ Done at Paris on 6 November 2001⁴

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 15 October to 3 November 2001, at its 31st session,

Acknowledging the importance of underwater cultural heritage as an integral part of the cultural heritage of humanity and a particularly important element in the history of peoples, nations, and their relations with each other concerning their common heritage,

Realizing the importance of protecting and preserving the underwater cultural heritage and that responsibility therefore rests with all States,

Noting growing public interest in and public appreciation of underwater cultural heritage,

Convinced of the importance of research, information and education to the protection and preservation of underwater cultural heritage,

Convinced of the public's right to enjoy the educational and recreational benefits of responsible non-intrusive access to in situ underwater cultural heritage, and of the value of public education to contribute to awareness, appreciation and protection of that heritage,

Aware of the fact that underwater cultural heritage is threatened by unauthorized activities directed at it, and of the need for stronger measures to prevent such activities,

Conscious of the need to respond appropriately to the possible negative impact on underwater cultural heritage of legitimate activities that may incidentally affect it,

Deeply concerned by the increasing commercial exploitation of underwater cultural heritage, and in particular by certain activities aimed at the sale, acquisition or barter of underwater cultural heritage,

Aware of the availability of advanced technology that enhances discovery of and access to underwater cultural heritage,

Believing that cooperation among States, international organizations, scientific institutions, professional organizations, archaeologists, divers, other interested parties and the public at large is essential for the protection of underwater cultural heritage,

Considering that survey, excavation and protection of underwater cultural heritage necessitate the availability and application of special scientific methods and the use of suitable techniques and equipment as well as a high degree of professional specialization, all of which indicate a need for uniform governing criteria,

Realizing the need to codify and progressively develop rules relating to the protection and preservation of underwater cultural heritage in conformity with international law and practice, including the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, the UNESCO Convention for the Protection of the World Cultural and Natural Heritage of 16 November 1972 and the United Nations Convention on the Law of the Sea of 10 December 1982,

Committed to improving the effectiveness of measures at international, regional and national levels for the preservation in situ or, if necessary for scientific or protective purposes, the careful recovery of underwater cultural heritage,

Having decided at its twenty-ninth session that this question should be made the subject of an international convention,

Adopts this second day of November 2001 this Convention.

Article 1

DEFINITIONS

For the purposes of this Convention:

1. (a) “Underwater cultural heritage” means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as:

- (i) Sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;

- (ii) Vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and
 - (iii) Objects of prehistoric character.
- (b) Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage.
- (c) Installations other than pipelines and cables, placed on the seabed and still in use, shall not be considered as underwater cultural heritage.
2. (a) “States Parties” means States which have consented to be bound by this Convention and for which this Convention is in force.
- (b) This Convention applies *mutatis mutandis* to those territories referred to in article 26, paragraph 2 (b), which become Parties to this Convention in accordance with the conditions set out in that paragraph, and to the extent “States Parties” refers to those territories.
3. “UNESCO” means the United Nations Educational, Scientific and Cultural Organization.
4. “Director-General” means the Director-General of UNESCO.
5. “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.
6. “Activities directed at underwater cultural heritage” means activities having underwater cultural heritage as their primary object and which may, directly or indirectly, physically disturb or otherwise damage underwater cultural heritage.
7. “Activities incidentally affecting underwater cultural heritage” means activities which, despite not having underwater cultural heritage as their primary object or one of their objects, may physically disturb or otherwise damage underwater cultural heritage.
8. “State vessels and aircraft” means warships, and other vessels or aircraft that were owned or operated by a State and used, at the time of sinking, only for government non-commercial purposes, that are identified as such and that meet the definition of underwater cultural heritage.
9. “Rules” means the Rules concerning activities directed at underwater cultural heritage, as referred to in article 33 of this Convention.

Article 2

OBJECTIVES AND GENERAL PRINCIPLES

1. This Convention aims to ensure and strengthen the protection of underwater cultural heritage.
2. States Parties shall cooperate in the protection of underwater cultural heritage.
3. States Parties shall preserve underwater cultural heritage for the benefit of humanity in conformity with the provisions of this Convention.

4. States Parties shall, individually or jointly as appropriate, take all appropriate measures in conformity with this Convention and with international law that are necessary to protect underwater cultural heritage, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.

5. The preservation in situ of underwater cultural heritage shall be considered as the first option before allowing or engaging in any activities directed at this heritage.

6. Recovered underwater cultural heritage shall be deposited, conserved and managed in a manner that ensures its long-term preservation.

7. Underwater cultural heritage shall not be commercially exploited.

8. Consistent with State practice and international law, including the United Nations Convention on the Law of the Sea, nothing in this Convention shall be interpreted as modifying the rules of international law and State practice pertaining to sovereign immunities, nor any State's rights with respect to its State vessels and aircraft.

9. States Parties shall ensure that proper respect is given to all human remains located in maritime waters.

10. Responsible non-intrusive access to observe or document in situ underwater cultural heritage shall be encouraged to create public awareness, appreciation, and protection of the heritage except where such access is incompatible with its protection and management.

11. No act or activity undertaken on the basis of the Convention shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction.

Article 3

RELATIONSHIP BETWEEN THIS CONVENTION AND THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of and in a manner consistent with international law, including the United Nations Convention on the Law of the Sea.

Article 4

RELATIONSHIP TO LAW OF SALVAGE AND LAW OF FINDS

Any activity relating to underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage or law of finds, unless it:

- (a) Is authorized by the competent authorities, and

- (b) Is in full conformity with this Convention, and
- (c) Ensures that any recovery of the underwater cultural heritage achieves its maximum protection.

Article 5

ACTIVITIES INCIDENTALLY AFFECTING UNDERWATER CULTURAL HERITAGE

Each State Party shall use the best practicable means at its disposal to prevent or mitigate any adverse effects that might arise from activities under its jurisdiction incidentally affecting underwater cultural heritage.

Article 6

BILATERAL, REGIONAL OR OTHER MULTILATERAL AGREEMENTS

1. States Parties are encouraged to enter into bilateral, regional or other multilateral agreements or develop existing agreements, for the preservation of underwater cultural heritage. All such agreements shall be in full conformity with the provisions of this Convention and shall not dilute its universal character. States may, in such agreements, adopt rules and regulations which would ensure better protection of underwater cultural heritage than those adopted in this Convention.

2. The Parties to such bilateral, regional or other multilateral agreements may invite States with a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned to join such agreements.

3. This Convention shall not alter the rights and obligations of States Parties regarding the protection of sunken vessels, arising from other bilateral, regional or other multilateral agreements concluded before its adoption, and, in particular, those that are in conformity with the purposes of this Convention.

Article 7

UNDERWATER CULTURAL HERITAGE IN INTERNAL WATERS, ARCHIPELAGIC WATERS AND TERRITORIAL SEA

1. States Parties, in the exercise of their sovereignty, have the exclusive right to regulate and authorize activities directed at underwater cultural heritage in their internal waters, archipelagic waters and territorial sea.

2. Without prejudice to other international agreements and rules of international law regarding the protection of underwater cultural heritage, States Parties shall require that the Rules be applied to activities directed at underwater cultural heritage in their internal waters, archipelagic waters and territorial sea.

3. Within their archipelagic waters and territorial sea, in the exercise of their sovereignty and in recognition of general practice among States, States Parties, with a view to cooperating on the best methods of protecting State vessels and aircraft, should inform the flag State Party to this Convention and, if applicable, other States with a verifiable link, especially a cultural, historical or archaeological link, with respect to the discovery of such identifiable State vessels and aircraft.

Article 8

UNDERWATER CULTURAL HERITAGE IN THE CONTIGUOUS ZONE

Without prejudice to and in addition to articles 9 and 10, and in accordance with article 303, paragraph 2, of the United Nations Convention on the Law of the Sea, States Parties may regulate and authorize activities directed at underwater cultural heritage within their contiguous zone. In so doing, they shall require that the Rules be applied.

Article 9

REPORTING AND NOTIFICATION IN THE EXCLUSIVE ECONOMIC ZONE AND ON THE CONTINENTAL SHELF

1. All States Parties have a responsibility to protect underwater cultural heritage in the exclusive economic zone and on the continental shelf in conformity with this Convention. Accordingly:

(a) A State Party shall require that when its national, or a vessel flying its flag, discovers or intends to engage in activities directed at underwater cultural heritage located in its exclusive economic zone or on its continental shelf, the national or the master of the vessel shall report such discovery or activity to it;

(b) In the exclusive economic zone or on the continental shelf of another State Party:

(i) States Parties shall require the national or the master of the vessel to report such discovery or activity to them and to that other State Party;

(ii) Alternatively, a State Party shall require the national or master of the vessel to report such discovery or activity to it and shall ensure the rapid and effective transmission of such reports to all other States Parties.

2. On depositing its instrument of ratification, acceptance, approval or accession, a State Party shall declare the manner in which reports will be transmitted under paragraph 1 (b) of this article.

3. A State Party shall notify the Director-General of discoveries or activities reported to it under paragraph 1 of this article.

4. The Director-General shall promptly make available to all States Parties any information notified to him under paragraph 3 of this article.

5. Any State Party may declare to the State Party in whose exclusive economic zone or on whose continental shelf the underwater cultural heritage is located its interest in being consulted on how to ensure the effective protection of that underwater cultural heritage. Such declaration shall be based on a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned.

Article 10

PROTECTION OF UNDERWATER CULTURAL HERITAGE IN THE EXCLUSIVE ECONOMIC ZONE AND ON THE CONTINENTAL SHELF

1. No authorization shall be granted for an activity directed at underwater cultural heritage located in the exclusive economic zone or on the continental shelf except in conformity with the provisions of this article.

2. A State Party in whose exclusive economic zone or on whose continental shelf underwater cultural heritage is located has the right to prohibit or authorize any activity directed at such heritage to prevent interference with its sovereign rights or jurisdiction as provided for by international law including the United Nations Convention on the Law of the Sea.

3. Where there is a discovery of underwater cultural heritage or it is intended that activity shall be directed at underwater cultural heritage in a State Party's exclusive economic zone or on its continental shelf, that State Party shall:

(a) Consult all other States Parties which have declared an interest under article 9, paragraph 5, on how best to protect the underwater cultural heritage;

(b) Coordinate such consultations as "Coordinating State", unless it expressly declares that it does not wish to do so, in which case the States Parties which have declared an interest under article 9, paragraph 5, shall appoint a Coordinating State.

4. Without prejudice to the duty of all States Parties to protect underwater cultural heritage by way of all practicable measures taken in accordance with international law to prevent immediate danger to the underwater cultural heritage, including looting, the Coordinating State may take all practicable measures, and/or issue any necessary authorizations in conformity with this Convention and, if necessary prior to consultations, to prevent any immediate danger to the underwater cultural heritage, whether arising from human activities or any other cause, including looting. In taking such measures assistance may be requested from other States Parties.

5. The Coordinating State:

(a) Shall implement measures of protection which have been agreed by the consulting States, which include the Coordinating State, unless the consulting States, which include the Coordinating State, agree that another State Party shall implement those measures;

(b) Shall issue all necessary authorizations for such agreed measures in conformity with the Rules, unless the consulting States, which include the Coordinating State, agree that another State Party shall issue those authorizations;

(c) May conduct any necessary preliminary research on the underwater cultural heritage and shall issue all necessary authorizations therefor, and shall promptly inform the Director-General of the results, who in turn will make such information promptly available to other States Parties.

6. In coordinating consultations, taking measures, conducting preliminary research and/or issuing authorizations pursuant to this article, the Coordinating State shall act on behalf of the States Parties as a whole and not in its own interest. Any such action shall not in itself constitute a basis for the assertion of any preferential or jurisdictional rights not provided for in international law, including the United Nations Convention on the Law of the Sea.

7. Subject to the provisions of paragraphs 2 and 4 of this article, no activity directed at State vessels and aircraft shall be conducted without the agreement of the flag State and the collaboration of the Coordinating State.

Article 11

REPORTING AND NOTIFICATION IN THE AREA

1. States Parties have a responsibility to protect underwater cultural heritage in the Area in conformity with this Convention and article 149 of the United Nations Convention on the Law of the Sea. Accordingly when a national, or a vessel flying the flag of a State Party, discovers or intends to engage in activities directed at underwater cultural heritage located in the Area, that State Party shall require its national, or the master of the vessel, to report such discovery or activity to it.

2. States Parties shall notify the Director-General and the Secretary-General of the International Seabed Authority of such discoveries or activities reported to them.

3. The Director-General shall promptly make available to all States Parties any such information supplied by States Parties.

4. Any State Party may declare to the Director-General its interest in being consulted on how to ensure the effective protection of that underwater cultural heritage. Such declaration shall be based on a verifiable link

to the underwater cultural heritage concerned, particular regard being paid to the preferential rights of States of cultural, historical or archaeological origin.

Article 12

PROTECTION OF UNDERWATER CULTURAL HERITAGE IN THE AREA

1. No authorization shall be granted for any activity directed at underwater cultural heritage located in the Area except in conformity with the provisions of this article.

2. The Director-General shall invite all States Parties which have declared an interest under article 11, paragraph 4, to consult on how best to protect the underwater cultural heritage, and to appoint a State Party to coordinate such consultations as the “Coordinating State”. The Director-General shall also invite the International Seabed Authority to participate in such consultations.

3. All States Parties may take all practicable measures in conformity with this Convention, if necessary prior to consultations, to prevent any immediate danger to the underwater cultural heritage, whether arising from human activity or any other cause including looting.

4. The Coordinating State shall:

(a) Implement measures of protection which have been agreed by the consulting States, which include the Coordinating State, unless the consulting States, which include the Coordinating State, agree that another State Party shall implement those measures; and

(b) Issue all necessary authorizations for such agreed measures, in conformity with this Convention, unless the consulting States, which include the Coordinating State, agree that another State Party shall issue those authorizations.

5. The Coordinating State may conduct any necessary preliminary research on the underwater cultural heritage and shall issue all necessary authorizations therefor, and shall promptly inform the Director-General of the results, who in turn shall make such information available to other States Parties.

6. In coordinating consultations, taking measures, conducting preliminary research, and/or issuing authorizations pursuant to this article, the Coordinating State shall act for the benefit of humanity as a whole, on behalf of all States Parties. Particular regard shall be paid to the preferential rights of States of cultural, historical or archaeological origin in respect of the underwater cultural heritage concerned.

7. No State Party shall undertake or authorize activities directed at State vessels and aircraft in the Area without the consent of the flag State.

Article 13

SOVEREIGN IMMUNITY

Warships and other government ships or military aircraft with sovereign immunity, operated for non-commercial purposes, undertaking their normal mode of operations, and not engaged in activities directed at underwater cultural heritage, shall not be obliged to report discoveries of underwater cultural heritage under articles 9, 10, 11 and 12 of this Convention. However, States Parties shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of their warships or other government ships or military aircraft with sovereign immunity operated for non-commercial purposes, that they comply, as far as is reasonable and practicable, with articles 9, 10, 11 and 12 of this Convention.

Article 14

CONTROL OF ENTRY INTO THE TERRITORY, DEALING AND POSSESSION

States Parties shall take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage illicitly exported and/or recovered, where recovery was contrary to this Convention.

Article 15

NON-USE OF AREAS UNDER THE JURISDICTION OF STATES PARTIES

States Parties shall take measures to prohibit the use of their territory, including their maritime ports, as well as artificial islands, installations and structures under their exclusive jurisdiction or control, in support of any activity directed at underwater cultural heritage which is not in conformity with this Convention.

Article 16

MEASURES RELATING TO NATIONALS AND VESSELS

States Parties shall take all practicable measures to ensure that their nationals and vessels flying their flag do not engage in any activity directed at underwater cultural heritage in a manner not in conformity with this Convention.

Article 17

SANCTIONS

1. Each State Party shall impose sanctions for violations of measures it has taken to implement this Convention.
2. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance with this Convention and

to discourage violations wherever they occur and shall deprive offenders of the benefit deriving from their illegal activities.

3. States Parties shall cooperate to ensure enforcement of sanctions imposed under this article.

Article 18

SEIZURE AND DISPOSITION OF UNDERWATER CULTURAL HERITAGE

1. Each State Party shall take measures providing for the seizure of underwater cultural heritage in its territory that has been recovered in a manner not in conformity with this Convention.

2. Each State Party shall record, protect and take all reasonable measures to stabilize underwater cultural heritage seized under this Convention.

3. Each State Party shall notify the Director-General and any other State with a verifiable link, especially a cultural, historical or archaeological link, to the underwater cultural heritage concerned of any seizure of underwater cultural heritage that it has made under this Convention.

4. A State Party which has seized underwater cultural heritage shall ensure that its disposition be for the public benefit, taking into account the need for conservation and research; the need for reassembly of a dispersed collection; the need for public access, exhibition and education; and the interests of any State with a verifiable link, especially a cultural, historical or archaeological link, in respect of the underwater cultural heritage concerned.

Article 19

COOPERATION AND INFORMATION-SHARING

1. States Parties shall cooperate and assist each other in the protection and management of underwater cultural heritage under this Convention, including, where practicable, collaborating in the investigation, excavation, documentation, conservation, study and presentation of such heritage.

2. To the extent compatible with the purposes of this Convention, each State Party undertakes to share information with other States Parties concerning underwater cultural heritage, including discovery of heritage, location of heritage, heritage excavated or recovered contrary to this Convention or otherwise in violation of international law, pertinent scientific methodology and technology, and legal developments relating to such heritage.

3. Information shared between States Parties, or between UNESCO and States Parties, regarding the discovery or location of underwater cultural heritage shall, to the extent compatible with their national legislation,

be kept confidential and reserved to competent authorities of States Parties as long as the disclosure of such information might endanger or otherwise put at risk the preservation of such underwater cultural heritage.

4. Each State Party shall take all practicable measures to disseminate information, including where feasible through appropriate international databases, about underwater cultural heritage excavated or recovered contrary to this Convention or otherwise in violation of international law.

Article 20

PUBLIC AWARENESS

Each State Party shall take all practicable measures to raise public awareness regarding the value and significance of underwater cultural heritage and the importance of protecting it under this Convention.

Article 21

TRAINING IN UNDERWATER ARCHAEOLOGY

States Parties shall cooperate in the provision of training in underwater archaeology, in techniques for the conservation of underwater cultural heritage and, on agreed terms, in the transfer of technology relating to underwater cultural heritage.

Article 22

COMPETENT AUTHORITIES

1. In order to ensure the proper implementation of this Convention, States Parties shall establish competent authorities or reinforce the existing ones where appropriate, with the aim of providing for the establishment, maintenance and updating of an inventory of underwater cultural heritage, the effective protection, conservation, presentation and management of underwater cultural heritage, as well as research and education.

2. States Parties shall communicate to the Director-General the names and addresses of their competent authorities relating to underwater cultural heritage.

Article 23

MEETINGS OF STATES PARTIES

1. The Director-General shall convene a Meeting of States Parties within one year of the entry into force of this Convention and thereafter at least once every two years. At the request of a majority of States Parties, the Director-General shall convene an Extraordinary Meeting of States Parties.

2. The Meeting of States Parties shall decide on its functions and responsibilities.

3. The Meeting of States Parties shall adopt its own Rules of Procedure.

4. The Meeting of States Parties may establish a Scientific and Technical Advisory Body composed of experts nominated by the States Parties with due regard to the principle of equitable geographical distribution and the desirability of a gender balance.

5. The Scientific and Technical Advisory Body shall appropriately assist the Meeting of States Parties in questions of a scientific or technical nature regarding the implementation of the Rules.

Article 24

SECRETARIAT FOR THIS CONVENTION

1. The Director-General shall be responsible for the functions of the Secretariat for this Convention.

2. The duties of the Secretariat shall include:

(a) Organizing Meetings of States Parties as provided for in article 23, paragraph 1; and

(b) Assisting States Parties in implementing the decisions of the Meetings of States Parties.

Article 25

PEACEFUL SETTLEMENT OF DISPUTES

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention shall be subject to negotiations in good faith or other peaceful means of settlement of their own choice.

2. If those negotiations do not settle the dispute within a reasonable period of time, it may be submitted to UNESCO for mediation, by agreement between the States Parties concerned.

3. If mediation is not undertaken or if there is no settlement by mediation, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea apply mutatis mutandis to any dispute between States Parties to this Convention concerning the interpretation or application of this Convention, whether or not they are also Parties to the United Nations Convention on the Law of the Sea.

4. Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea pursuant to article 287 of the latter shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure

pursuant to article 287 for the purpose of the settlement of disputes arising out of this Convention.

5. A State Party to this Convention which is not a party to the United Nations Convention on the Law of the Sea, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the United Nations Convention on the Law of the Sea for the purpose of settlement of disputes under this article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with annexes V and VII of the United Nations Convention on the Law of the Sea, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in annex V, article 2, and annex VII, article 2, for the settlement of disputes arising out of this Convention.

Article 26

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by Member States of UNESCO.

2. This Convention shall be subject to accession:

(a) By States that are not members of UNESCO but are members of the United Nations or of a specialized agency within the United Nations system or of the International Atomic Energy Agency, as well as by States Parties to the Statute of the International Court of Justice and any other State invited to accede to this Convention by the General Conference of UNESCO;

(b) By territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director-General.

Article 27

ENTRY INTO FORCE

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument referred to in article 26, but solely with respect to the twenty States or territories that have so deposited their instruments. It shall enter into force for each other State or territory three months after the date on which that State or territory has deposited its instrument.

Article 28

DECLARATION AS TO INLAND WATERS

When ratifying, accepting, approving or acceding to this Convention or at any time thereafter, any State or territory may declare that the Rules shall apply to inland waters not of a maritime character.

Article 29

LIMITATIONS TO GEOGRAPHICAL SCOPE

At the time of ratifying, accepting, approving or acceding to this Convention, a State or territory may make a declaration to the depositary that this Convention shall not be applicable to specific parts of its territory, internal waters, archipelagic waters or territorial sea, and shall identify therein the reasons for such declaration. Such State shall, to the extent practicable and as quickly as possible, promote conditions under which this Convention will apply to the areas specified in its declaration, and to that end shall also withdraw its declaration in whole or in part as soon as that has been achieved.

Article 30

RESERVATIONS

With the exception of article 29, no reservations may be made to this Convention.

Article 31

AMENDMENTS

1. A State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the next Meeting of States Parties for discussion and possible adoption.

2. Amendments shall be adopted by a two-thirds majority of States Parties present and voting.

3. Once adopted, amendments to this Convention shall be subject to ratification, acceptance, approval or accession by the States Parties.

4. Amendments shall enter into force, but solely with respect to the States Parties that have ratified, accepted, approved or acceded to them, three months after the deposit of the instruments referred to in paragraph 3 of this article by two thirds of the States Parties. Thereafter, for each State or territory that ratifies, accepts, approves or accedes to it,

the amendment shall enter into force three months after the date of deposit by that Party of its instrument of ratification, acceptance, approval or accession.

5. A State or territory which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this article shall, failing an expression of different intention by that State or territory, be considered:

(a) As a Party to this Convention as so amended; and

(b) As a Party to the unamended Convention in relation to any State Party not bound by the amendment.

Article 32

DENUNCIATION

1. A State Party may, by written notification addressed to the Director-General, denounce this Convention.

2. The denunciation shall take effect twelve months after the date of receipt of the notification, unless the notification specifies a later date.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 33

THE RULES

The Rules annexed to this Convention form an integral part of it and, unless expressly provided otherwise, a reference to this Convention includes a reference to the Rules.

Article 34

REGISTRATION WITH THE UNITED NATIONS

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General.

Article 35

AUTHORITATIVE TEXTS

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authoritative.

ANNEX

Rules concerning activities directed at underwater cultural heritage

I. GENERAL PRINCIPLES

Rule 1. The protection of underwater cultural heritage through in situ preservation shall be considered as the first option. Accordingly, activities directed at underwater cultural heritage shall be authorized in a manner consistent with the protection of that heritage, and subject to that requirement may be authorized for the purpose of making a significant contribution to protection or knowledge or enhancement of underwater cultural heritage.

Rule 2. The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods.

This Rule cannot be interpreted as preventing:

(a) The provision of professional archaeological services or necessary services incidental thereto whose nature and purpose are in full conformity with this Convention and are subject to the authorization of the competent authorities;

(b) The deposition of underwater cultural heritage, recovered in the course of a research project in conformity with this Convention, provided such deposition does not prejudice the scientific or cultural interest or integrity of the recovered material or result in its irretrievable dispersal; is in accordance with the provisions of Rules 33 and 34; and is subject to the authorization of the competent authorities.

Rule 3. Activities directed at underwater cultural heritage shall not adversely affect the underwater cultural heritage more than is necessary for the objectives of the project.

Rule 4. Activities directed at underwater cultural heritage must use non-destructive techniques and survey methods in preference to recovery of objects. If excavation or recovery is necessary for the purpose of scientific studies or for the ultimate protection of the underwater cultural heritage, the methods and techniques used must be as non-destructive as possible and contribute to the preservation of the remains.

Rule 5. Activities directed at underwater cultural heritage shall avoid the unnecessary disturbance of human remains or venerated sites.

Rule 6. Activities directed at underwater cultural heritage shall be strictly regulated to ensure proper recording of cultural, historical and archaeological information.

Rule 7. Public access to in situ underwater cultural heritage shall be promoted, except where such access is incompatible with protection and management.

Rule 8. International cooperation in the conduct of activities directed at underwater cultural heritage shall be encouraged in order to further the effective exchange or use of archaeologists and other relevant professionals.

II. PROJECT DESIGN

Rule 9. Prior to any activity directed at underwater cultural heritage, a project design for the activity shall be developed and submitted to the competent authorities for authorization and appropriate peer review.

Rule 10. The project design shall include:

(a) An evaluation of previous or preliminary studies;

(b) The project statement and objectives;

- (c) The methodology to be used and the techniques to be employed;
- (d) The anticipated funding;
- (e) An expected timetable for completion of the project;
- (f) The composition of the team and the qualifications, responsibilities and experience of each team member;
- (g) Plans for post-fieldwork analysis and other activities;
- (h) A conservation programme for artefacts and the site in close cooperation with the competent authorities;
- (i) A site management and maintenance policy for the whole duration of the project;
- (j) A documentation programme;
- (k) A safety policy;
- (l) An environmental policy;
- (m) Arrangements for collaboration with museums and other institutions, in particular scientific institutions;
- (n) Report preparation;
- (o) Deposition of archives, including underwater cultural heritage removed; and
- (p) A programme for publication.

Rule 11. Activities directed at underwater cultural heritage shall be carried out in accordance with the project design approved by the competent authorities.

Rule 12. Where unexpected discoveries are made or circumstances change, the project design shall be reviewed and amended with the approval of the competent authorities.

Rule 13. In cases of urgency or chance discoveries, activities directed at the underwater cultural heritage, including conservation measures or activities for a period of short duration, in particular site stabilization, may be authorized in the absence of a project design in order to protect the underwater cultural heritage.

III. PRELIMINARY WORK

Rule 14. The preliminary work referred to in Rule 10 (a) shall include an assessment that evaluates the significance and vulnerability of the underwater cultural heritage and the surrounding natural environment to damage by the proposed project, and the potential to obtain data that would meet the project objectives.

Rule 15. The assessment shall also include background studies of available historical and archaeological evidence, the archaeological and environmental characteristics of the site, and the consequences of any potential intrusion for the long-term stability of the underwater cultural heritage affected by the activities.

IV. PROJECT OBJECTIVE, METHODOLOGY AND TECHNIQUES

Rule 16. The methodology shall comply with the project objectives, and the techniques employed shall be as non-intrusive as possible.

V. FUNDING

Rule 17. Except in cases of emergency to protect underwater cultural heritage, an adequate funding base shall be assured in advance of any activity, sufficient to complete all stages of the project design, including conservation, documentation and curation of recovered artefacts, and report preparation and dissemination.

Rule 18. The project design shall demonstrate an ability, such as by securing a bond, to fund the project through to completion.

Rule 19. The project design shall include a contingency plan that will ensure conservation of underwater cultural heritage and supporting documentation in the event of any interruption of anticipated funding.

VI. PROJECT DURATION—TIMETABLE

Rule 20. An adequate timetable shall be developed to assure in advance of any activity directed at underwater cultural heritage the completion of all stages of the project design, including conservation, documentation and curation of recovered underwater cultural heritage, as well as report preparation and dissemination.

Rule 21. The project design shall include a contingency plan that will ensure conservation of underwater cultural heritage and supporting documentation in the event of any interruption or termination of the project.

VII. COMPETENCE AND QUALIFICATIONS

Rule 22. Activities directed at underwater cultural heritage shall only be undertaken under the direction and control of, and in the regular presence of, a qualified underwater archaeologist with scientific competence appropriate to the project.

Rule 23. All persons on the project team shall be qualified and have demonstrated competence appropriate to their roles in the project.

VIII. CONSERVATION AND SITE MANAGEMENT

Rule 24. The conservation programme shall provide for the treatment of the archaeological remains during the activities directed at underwater cultural heritage, during transit and in the long term. Conservation shall be carried out in accordance with current professional standards.

Rule 25. The site management programme shall provide for the protection and management in situ of underwater cultural heritage, in the course of and upon termination of fieldwork. The programme shall include public information, reasonable provision for site stabilization, monitoring, and protection against interference.

IX. DOCUMENTATION

Rule 26. The documentation programme shall set out thorough documentation including a progress report of activities directed at underwater cultural heritage, in accordance with current professional standards of archaeological documentation.

Rule 27. Documentation shall include, at a minimum, a comprehensive record of the site, including the provenance of underwater cultural heritage moved or removed in the course of the activities directed at underwater cultural heritage, field notes, plans, drawings, sections, and photographs or recording in other media.

X. SAFETY

Rule 28. A safety policy shall be prepared that is adequate to ensure the safety and health of the project team and third parties and that is in conformity with any applicable statutory and professional requirements.

XI. ENVIRONMENT

Rule 29. An environmental policy shall be prepared that is adequate to ensure that the seabed and marine life are not unduly disturbed.

NOTES

¹ General Assembly resolution 57/199, annex.

² Not yet in force.

³ *International Legal Materials*, vol. 41, part I (January 2002), p. 37.

⁴ Not yet in force.

Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS¹

A. Decisions of the United Nations Administrative Tribunal²

1. JUDGEMENT No. 1043 (23 JULY 2002): MINK v. THE SECRETARY-GENERAL OF THE UNITED NATIONS³

Allegation of sexual harassment not appropriately responded to by the Administration—Claxton (1992) and Belas-Gianou (1995) judgments—Importance of a thorough investigation—Promotion and agreed termination of accused should have been stayed during investigation—Dissemination of investigation report

The Applicant entered the service of the Organization in May 1979, on a short-term appointment as a clerk/typist at the G-2 level. The Applicant passed the “G to P” exam in 1995 and, at the material time, had a permanent appointment and occupied the P-2-level position of Photo Caption Writer, Photo Unit, Department of Public Information. In February 1997, the Applicant complained of sexual harassment by her direct supervisor, the Officer in Charge of the Photo Unit. The Panel on Discrimination and Other Grievances and an independent Office of Human Resources Management panel investigated the Applicant’s claims, before she filed an appeal before the Joint Appeals Board.

In June 1998, the Assistant Secretary-General of the Office of Human Resources Management advised the Applicant that, after considering a report of the Office’s investigation panel, she had found no evidence sustaining the Applicant’s allegations of sexual harassment, but that the report had exposed serious management problems in the Unit that would be addressed. After the Office refused to give the Applicant a copy of her report, she filed an appeal with the Joint Appeals Board, in October 1998. After its consideration of the case, the Board unanimously recommended that the Applicant be compensated for unfair treatment, and the Under-Secretary-General for Management accepted the recommendation to pay her three months’ net base salary in compensation.

The Applicant submitted an Application to the Administrative Tribunal, contending that her rights had been violated by the failure of the Organization to act promptly, effectively and in good faith in addressing the complaints of sexual harassment she had made against her supervisor.

In consideration of the matter, the Tribunal recalled Judgement No. 560, *Claxton* (1992), in which it found that, when allegations of sexual harassment had been made, the Secretary-General was bound to conduct promptly such reasonable investigations as the situation called for. The Tribunal further recalled Judgement No. 707, *Belas-Gianou* (1995), in which it was stated that the Tribunal was sensitive to claims of sexual harassment and had made clear the responsibility of the Organization to address them promptly and effectively. In this regard, the Tribunal noted that soon after the Applicant first lodged her complaint, both informal and formal actions were taken, the last being the independent OHRM investigation. However, the Tribunal also noted that the Administration had taken 15 months to complete the procedures, and the Tribunal was of the view that this period was neither timely nor prompt. Furthermore, the Tribunal considered that, while the Administration did take a number of steps to address the Applicant's complaint, it did not take the necessary measures to contain the problem or its negative impact on the two staff members involved as well as on the work of the Department. Under the circumstances, the Tribunal found that the situation represented a denial of fair treatment of the Applicant, and that the Respondent should have reassigned either the Applicant or her supervisor to another department.

The Tribunal agreed with the Board's conclusions that the Office's investigative panel had not made a thorough investigation of the allegations, in particular that the panel had interviewed only one female staff member who had close contact with the Officer in Charge. According to the Board, a properly conducted investigation and fact-finding in such a case should have included interviews with a significant number of female staff members in an attempt to discern whether or not there was a pattern of behaviour on the part of the accused.

Moreover, in the view of the Tribunal, the accuser's promotion to the P-4 level and the subsequent grant of an agreed termination during the investigative period, thereby foreclosing any possibility of further disciplinary or administrative action against him, should have been stayed, pending the outcome of the investigation.

Regarding the contention of the Applicant that she should have been given a copy of the Office's investigative report, the Tribunal disagreed with the Respondent's view that it was important to protect the due process rights of the accused and that, in accordance with administrative instruction ST/AI/379, the Applicant was only entitled to be informed of the course of action taken in response to her complaint. However, as pointed out by the Tribunal, paragraph 12 of administrative instruction ST/AI/379

states that “[t]he alleged harasser and the aggrieved individual shall be informed promptly of the course of action decided upon by the Assistant Secretary-General for Human Resource Management”. In the view of the Tribunal, this provision provided for a minimum guarantee to prompt information regarding the outcome rather than a limit on the rights to information of either party. Furthermore, in the instant case, the Tribunal observed that the Applicant’s supervisor had received a copy of the report, and the report of the Grievance Panel was made available to both parties. Accordingly, the Tribunal was not convinced that the decision to deny the Applicant the Office’s report was justified.

In view of the foregoing, the Tribunal ordered the Respondent to pay the Applicant compensation of six months’ net base salary at the rate in effect on the date of judgement and to provide the Applicant with a copy of the report of the Office’s investigation panel.

2. JUDGEMENT NO. 1045 (23 JULY 2002): OBINY V.
THE SECRETARY-GENERAL OF THE UNITED NATIONS⁴

Non-renewal of fixed-term contract—No expectancy of renewal—Question of time to improve work performance—Importance of initiation of disciplinary proceedings for staff member to clear name—Importance of notification to staff member of misconduct—Investigation into unauthorized outside activities must be conducted properly—Involvement in staff association led to unfair treatment of staff member

The Applicant joined the United Nations Development Programme (UNDP) in Nairobi as a Programme Assistant, Programme Support Unit, on a three-month fixed-term appointment at the GS-8 level in August 1990. His fixed-term appointment was extended several times, until 31 December 1996. Between April 1994 and May 1996, the Applicant was Chairman of the Staff Association.

On 29 November 1996, the Resident Representative informed the Applicant that, owing to his failure to meet the required standards of performance, his fixed-term appointment would not be renewed beyond its expiration date of 31 December 1996. He further advised the Applicant that he would be placed on special leave with full pay until then and that his entry into the UNDP offices would be restricted. The Applicant appealed this decision to the Joint Appeals Board. The Under-Secretary-General for Management accepted the Board’s unanimous recommendation that the decision not to extend the Applicant’s fixed-term contract had been arbitrary and awarded him nine months’ net base salary as compensation. Subsequently, the Applicant appealed to the Administrative Tribunal, contending that the compensation was insufficient and requesting that he be reinstated.

In consideration of the matter, the Tribunal recalled that, pursuant to staff rule 104.12 (b) (ii), a fixed-term appointment did not carry any expectancy of renewal and, furthermore, the Tribunal had consistently reiterated

that a “fixed-term appointment normally ends on its expiration date, and prior renewals cannot create, for the staff member, a legal expectancy of renewal or conversion to any other type of appointment” (Judgements No. 578, *Hassani* (1992), and No. 440, *Shankar* (1989)). In the instant case, the Tribunal noted that the Applicant’s appointment had been terminated because of deteriorating performance, unauthorized absences and misconduct, which allegedly included operating a company, Realtime Software Ltd., without the permission of the Secretary-General.

With respect to the Applicant’s performance, the Tribunal noted the finding of the Board that, notwithstanding the Respondent’s claim that the Applicant’s performance in the last year of his contract was not satisfactory, no performance report was undertaken for the said period, which represented a serious breach of procedure and a violation of the Applicant’s rights. In the view of the Tribunal, this breach was even more serious in the light of the fact that there was a specific instruction from Headquarters to issue the Applicant with a performance report reflecting the quality of his performance for this period. In this regard, the Tribunal noted that, on 2 November 1996, the Applicant’s supervisor urged him to improve his performance, yet on 14 November 1996, less than two weeks later, recommended to the UNDP Resident Representative that the Applicant’s fixed-term contract not be extended. In the opinion of the Tribunal, the Applicant was given neither the time nor a genuine opportunity to improve his alleged shortcomings, which indicated arbitrariness in the decision-making process.

Regarding the alleged misconduct, the Tribunal agreed with the Applicant that disciplinary proceedings to investigate allegations of misconduct and unauthorized absences should have been initiated, in order to provide the Applicant with an opportunity to clear his name. The fact that no such proceedings were initiated violated the Applicant’s rights and satisfied the Tribunal that the action taken against him was arbitrary and unfair (Judgment No. 877, *Abdulhadi* (1998)). Furthermore, the Tribunal noted that the Applicant had not received a copy of the letter dated 14 November 1996 sent by his supervisor to the UNDP Resident Representative regarding alleged acts of misconduct said to have occurred over several years, which was yet another example of the Administration’s violation of the principles of transparency as well as of the Applicant’s rights of due process.

With regard to the Applicant’s alleged outside activities, i.e. his involvement with Realtime Software, Ltd., without the consent of the Secretary-General, the Tribunal also considered that the Administration had demonstrated a lack of fairness and equity by failing to initiate the necessary inquiry. Moreover, the Tribunal expressed its concern at the action taken by the Applicant’s supervisor to obtain the documentation that led him to conclude that the Applicant was involved in such outside activities, i.e. breaking into his computer. The Tribunal noted that it was not acceptable that investigations were conducted without rules and guarantees of due process and without according due respect for the inalienable rights

proclaimed by the Organization (Judgements No. 1022, *Araim* (2001), and No. 1023, *Sergienko* (2001)).

The Tribunal disagreed with the Board's conclusion regarding the issue of the Applicant's involvement with the Staff Association of UNDP, finding instead that the Applicant was vulnerable to victimization in view of his role in championing staff welfare matters and defending the interest of the staff. In this regard, the Tribunal pointed to the important and significant information outlined in the report of the Special Human Resources Review Mission to Kenya, dated 19 November 1997, as well as the minutes of the Staff Association meeting of 29 August 1997, which detailed unfair treatment which members of the Staff Association had suffered as a result of their involvement in such matters. The Tribunal also noted the findings of the Rebuttal Panel, following the Applicant's rebuttal of his 1994 performance report, in which the UNDP Resident Representative in Nairobi mentioned that one of the reasons for lowering the Applicant's rating was related to his position as Chairman of the UNDP Kenya Staff Association.

In view of the foregoing, the Tribunal ordered the Respondent to pay the Applicant compensation of 12 months' net base salary at the rate in effect on the date of his separation from service, less the amount already paid by the Secretary-General, and rejected all other pleas.

3. JUDGEMENT NO. 1056 (26 JULY 2002): KATZ V.
THE SECRETARY-GENERAL OF THE UNITED NATIONS⁵

Non-promotion to D-1 level—ST/AI/412 on the achievement of gender equality—Article 8 of the Charter of the United Nations and need for affirmative action—Confidentiality of Appointment and Promotion Board records

The Applicant joined the Organization on a three-month fixed-term appointment as a Legal Officer at the P-3 level with the International Trade Law Branch, Office of Legal Affairs, Vienna, in June 1981. His fixed-term appointment was extended several times and, effective 1 July 1984, he was granted a permanent appointment and was promoted to the P-4 level. In November 1990, the Applicant was reassigned to the General Legal Division, Office of Legal Affairs, New York. Effective 1 May 1991, the Applicant was promoted to the P-5 level and his functional title was changed to Senior Legal Officer. In July 1997, the Applicant applied for the D-1-level post of Principal Legal Officer, General Legal Division, Office of Legal Affairs. Although the Office recommended that he be promoted as the superior candidate, a female candidate who, according to the Office, was less qualified than the Applicant was promoted to the post. In March 1998, the Appointment and Promotion Board decided to recommend the female candidate and, following a further review of the case at the request of the Under-Secretary-General for Management, the Board upheld its original recommendation on the grounds that the candidates were equally qualified and

in keeping with administrative instruction ST/AI/412 on the achievement of gender equality. The following month, the Secretary-General approved the Board's recommendation. The Applicant appealed to the Joint Appeals Board, and then brought the matter before the Administrative Tribunal.

The Applicant submitted that the Respondent had violated the principles set forth in Article 101 (3) of the Charter of the United Nations, the relevant General Assembly resolutions and staff regulation 4.2, all of which provide that, in promotion decisions, paramount consideration should be given to "the necessity of securing the highest standards of efficiency, competence and integrity". He further submitted that the achievement of gender equality, as set forth in administrative instruction ST/AI/412, was subject to this paramount consideration. The Applicant also claimed that the Joint Appeals Board based its considerations and recommendations on an incomplete and inadequate record of the proceedings of the Appointment and Promotion Board depriving him of a full consideration of his case and consequently violating his rights of due process.

The Tribunal, while noting that the Director of the General Legal Division, as well as the Legal Counsel, had evaluated the Applicant as the superior candidate, indicating that the candidates were not equally qualified and giving compelling reasons as to why the Applicant was the superior candidate, at the same time recalled its established jurisprudence that appointments and promotions were within the discretionary authority of the Secretary-General. While the Secretary-General's discretionary powers were not absolute, the Tribunal found in the instant case that the Respondent had acted within his authority in deciding to promote a "substantially equally qualified" female candidate to the D-1-level post.

In this regard, the Tribunal explained that administrative instruction ST/AI/412 provided that special measures for the achievement of gender equality within the Secretariat must be instituted with a view to achieving the goal of "50-50 parity between men and women both overall and for the positions at the D-1 level and above by the year 2000". The instruction also provided for flexibility in various promotion requirements, for example, flexibility regarding seniority. Moreover, the Tribunal recalled that it had reaffirmed, in Judgement No. 958, *Draz* (2000), that the implementation of special measures for the achievement of gender equality, in compliance with General Assembly resolutions, was fully consistent with the exercise of the Secretary-General's discretionary authority, even if such measures were at the expense of other candidates. In Judgement No. 671, *Grinblat* (1994), the Tribunal further recalled that the existence of an unsatisfactory history with respect to the recruitment and promotion of women did not accord with Article 8 of the Charter of the United Nations, and that, unless affirmative action measures were taken to ameliorate the effects of past history, they would, without doubt, be perpetuated for many years. The Tribunal found that these words were still pertinent, particularly since the goal of 50-50 parity had not yet been reached, and that, therefore, the Respondent

had acted within his discretionary authority in deciding to promote a substantially equally qualified female candidate to the D-1-level post.

Regarding the Applicant's request to gain access to the records of the Appointment and Promotion Board, the Tribunal was sympathetic to this legitimate interest in obtaining information on how his candidacy was reviewed, particularly in the light of the strong departmental recommendation to promote him and the contradictory final outcome. At the same time, the Tribunal shared the Respondent's concern that these documents should be kept beyond the reach of the parties in order to preserve the confidential nature of the Board's proceedings and to enable it to function properly and efficiently. Having said this, the Tribunal found that the Joint Appeals Board had before it all the necessary documents and information, enabling it to reach an informed conclusion.

In view of the foregoing, the Tribunal rejected the Application in its entirety.

4. JUDGEMENT NO. 1063 (26 JULY 2002): BERGHUYS V.
THE UNITED NATIONS JOINT STAFF PENSION BOARD⁶

Domestic partner as a surviving "spouse" for pension purposes—Meaning of "spouse" under United Nations Joint Staff Pension Fund Regulations and Rules—Interpretation according to "ordinary meaning" of terms—Effect of national laws of a participant in the Fund

The Applicant was the domestic partner of a staff member of the International Labour Organization (ILO) from 1993 until the staff member's death on 29 July 1999. In June 1999, the Applicant and the deceased, both nationals of the Netherlands, had formalized their relationship by entering into a domestic partnership agreement under Dutch law. The Applicant had submitted to the United Nations Joint Staff Pension Fund (UNJSPF) a survivor's claim, in accordance with articles 34 and 35 of the UNJSPF Regulations and Rules, which was denied on the basis that the Applicant was not a legally recognized surviving spouse. Since the deceased, however, was unmarried at the time of his death and the Applicant was his designated beneficiary, he received the residual settlement, in accordance with article 38 of the UNJSPF Regulations and Rules.

In its consideration of the matter, the Tribunal noted that the Applicant was the surviving partner in a same-sex relationship recognized as a special partnership with rights under the national law of the deceased, but that, in spite of modern cultural notions of relationships and partners, the Applicant was not the surviving spouse of the deceased participant, because they were not married.

In the view of the Tribunal, the instant case turned on the meaning of the word "spouse", as set out in the UNJSPF Regulations and Rules. In this regard, the Tribunal recalled that there was no definition of the word

spouse in the Regulations, and further recalled that the Organization had been flexible in recognizing that there was no common understanding of the meaning of the word among the peoples of the world, for example, recognizing common law marriages and polygamous marriages, when such marriages were recognized under the national law of the participant.

In reaching its conclusion, the Tribunal considered that, under the Vienna Convention on the Law of Treaties, it should apply the general international practice, which referred to interpretation according to the “ordinary meaning” of the terms in their context and in the light of their object and purpose (Judgement No. 942, *Merani* (1999)), and further considered the injunction in the Convention that account should be taken of all relevant rules of international law that were applicable between the parties at the time of the interpretation (see the advisory opinion of the International Court of Justice on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970)). In the instant case, the Tribunal observed that, under Article 8 of the Charter of the United Nations, the Organization “shall place no restrictions on the equality of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs”. The Tribunal also looked at international agreements regarding civil rights, such as article 26 of the International Covenant on Civil and Political Rights, which concerned equality before and equal protection of the law. Moreover, the Tribunal examined dictionary meanings of the word spouse and found them to be outdated, since the national laws of several countries had recognized that a pledge of marriage may be made by persons of the same sex.

In this connection, the Tribunal recalled that the Netherlands, whose law guided the analysis of this application, was one of the countries that recognized a legal pledge of marriage made by two men, under the Same-Sex Marriage Act, which came into effect on 1 April 2001. However, the Tribunal pointed out that the deceased had died on 29 July 1999, and therefore the Applicant and the deceased benefited only from the provisions of the Dutch registered partnership law of 1 January 1998. The participants in a registered partnership were not spouses, and law and custom at that time still interpreted a spouse as being a partner in a legal marriage, whatever the nature of that marriage.

For the reasons stated above, the Tribunal denied the application in its entirety.

5. JUDGEMENT NO. 1064 (26 JULY 2002): PALUKU V.
THE SECRETARY-GENERAL OF THE UNITED NATIONS⁷

Abolition of post—Disguised disciplinary proceeding—Judgements Nos. 459 (Moore-Woodroffe) and 501 (Lavalle) on abolition of posts—Administrative action versus disciplinary proceeding—Issue of special post allowance

The Applicant entered the service of UNICEF in Kinshasa, in February 1985, as a locally recruited Assistant Administrative and Finance Officer on a short-term contract at the NO-B level. After completing a series of fixed-term contracts, the Applicant served one year on a probationary contract from 1 January until 31 December 1990, and was granted a permanent appointment on 1 January 1991. From 1 August 1990 until his separation from service on 30 June 1991, the Applicant acted as Officer in Charge of the Finance and Administration Section of the Kinshasa Office of UNICEF. In late 1990, an audit was performed of the Kinshasa Office, and the resulting report indicated that the Applicant had “committed acts of mismanagement” and had been involved “in fraudulent activities”. The report recommended that the Applicant be immediately suspended without pay; that the UNICEF Representative convene an ad hoc Joint Disciplinary Committee to investigate; and that the Comptroller be advised accordingly. In addition, as the Applicant was seen to “ostensibly [lack] the necessary training/knowledge to manage the section” and was “seemingly experiencing difficulties [coping] with the exigencies of the job”, the report recommended that the post be converted to that of an International Project Officer.

On 20 February 1991, the Budget Programme Review Committee approved the abolition of the post occupied by the Applicant and the creation of an L-3 international Professional post of Administrative and Finance Officer. On 30 June 1991, the Applicant was separated from service with a termination indemnity of five months’ salary. On 2 April 1992, the Applicant requested the payment of a special post allowance (SPA) for the period in which he acted as Officer in Charge of the Finance and Administration Section.

The Joint Appeals Panel had concluded that the circumstances of the case justified its decision to receive and consider it, and further concluded that the Applicant had been deprived of a fundamental right to due process and recommended that he be paid compensation in the amount of \$5,000, which was accepted by the Under-Secretary-General for Management.

The Tribunal agreed with the Applicant that the Organization had employed an administrative action as a disguised disciplinary proceeding. In this regard, the Tribunal noted that the Administration had not convened a Joint Disciplinary Committee, as recommended by the audit report, but rather had informed the Applicant that his post was to be abolished and that he would be separated from service accordingly. In the Tribunal’s view, the abolition of the national post encumbered by the Applicant in order to create an international post, which would be filled by a higher-level staff member, was not a legitimate method of terminating a staff member, even if it would have represented a simple solution to a problematic situation.

Furthermore, even if the Tribunal were to accept that this was a straightforward case of abolition of post, the Administration should have made a good-faith effort to place the staff member in an alternative post

(Judgements No. 459, *Moore-Woodroffe* (1989), and No. 501, *Lavalle* (1990)). The fact that the Administration made no such efforts in the instant case reinforced the impression of the Tribunal that the abolition of the Applicant's post was an administrative manoeuvre designed to get rid of an inconvenient staff member without following the appropriate procedures either governing abolition of post or disciplinary proceedings.

In Judgement No. 610, *Oretega et al.* (1993), the Tribunal held that administrative action, rather than disciplinary proceedings, should only be taken when it neither prejudiced nor damaged the position of the staff member; in the instant case, the Tribunal found that the Applicant had been prejudiced by the use of administrative action. The holding of disciplinary proceedings would not only have provided an appropriate forum to resolve the issues raised by the audit report, but also would have had the added benefit of providing necessary due process to the Applicant. In this regard, the Tribunal ordered the Respondent to pay the Applicant additional compensation of \$5,000.

Regarding the request of the Applicant for an SPA for the period during which he acted as Officer in Charge of the Finance and Administration Section of the Office, the Tribunal recalled that, pursuant to staff regulation 103.11 (b), an SPA is granted in "exceptional circumstances" and at the discretion of the Administration. Furthermore, as the Tribunal recognized in Judgement No. 336, *Maqueda Sanchez* (1984), staff were often asked to render services of a character and at a level superior to those for which they had been appointed. In view of the above, the Tribunal rejected the Applicant's claim.

6. JUDGEMENT NO. 1070 (26 JULY 2002): FLANAGAN V.
THE SECRETARY-GENERAL OF THE UNITED NATIONS⁸

Request for adjustment to United States federal income tax reimbursement on grounds that lump-sum payment on retirement resulted in limitation on tax deductions—Principle of equality and ST/IC/1996/73

On 31 December 1995, the Applicant retired from service, and he opted for a one-third lump-sum commutation from the United Nations Joint Staff Pension Fund. As a United States national, he was liable to pay income tax to the United States on his United Nations salaries and emoluments and, in accordance with information circular ST/IC/1996/73, he was entitled to reimbursement of such income tax paid. In early 1996, the Applicant received a lump-sum payment of US\$ 337,176 and, as a result, his United Nations-related income for 1996 exceeded the United States federal tax threshold of \$117,950, thus limiting the deductions he could claim.

In April 1997, the Applicant requested a review of his federal income tax reimbursement for 1996, noting a discrepancy between his calculation and that of the United Nations Income Tax Unit. While the Unit had reimbursed the Applicant for the taxes paid on his United Nations-related

income, it had not recognized that he had paid higher taxes on his non-United Nations income as a direct result of the lump-sum payment, which caused him to exceed the threshold. The Applicant had claimed that the reimbursement he had received had not complied with the requirements of paragraph 4 of ST/IC/1996/73, as he was not placed in the same position he would have been had his emoluments not been taxed. The Respondent had argued that while the Applicant would not have reached the tax threshold had his United Nations income not existed, customary reimbursement calculations procedures, as outlined in ST/IC/1996/73, had been followed in the Applicant's case. The Joint Appeals Panel made no recommendation in support of the Applicant's appeal.

In consideration of this matter, the Tribunal recalled that, unlike staff members of other nationalities, United States nationals are obliged to pay to their Government income tax on their United Nations emoluments, whereas most Member States do not tax United Nations-related income. The United Nations, in order to comply with the principle of equality of its staff members, therefore reimburses the United States nationals the amounts they pay in taxes on their United Nations-related income. In this regard, the Tribunal pointed out that paragraph 4 of ST/IC/1996/73 clearly states that the purpose of the reimbursement system is to place United Nations staff members subject to taxation in the position they would have had if their official emoluments were not taxed. The Tribunal also was of the view that this leading principle of equality required that the amount of tax paid by the Applicant on his income that was not related to the United Nations be the same amount that the staff member would have paid on that income had there been no United Nations-related income.

In 1999, as the Tribunal noted, the Government of the United States enacted a law significantly reducing the eligibility for deductions for taxpayers with an annual income in excess of US\$ 117,950. The Tribunal further noted that the facts in the instant case clearly demonstrated that the Applicant would not have exceeded that threshold had it not been for the lump sum of \$337,176 that he received from the United Nations as a consequence of his retirement and that he would otherwise have benefited from a significantly higher level of permissible deductions. Therefore, in the Tribunal's opinion, the Applicant was entitled to be reimbursed for the resulting difference.

In view of the foregoing, the Tribunal ordered the Administration to pay the Applicant the sum of \$5,125, plus 8 per cent interest, representing the approximate difference between the amounts which would have met the requirements of paragraph 4 of ST/IC/1996/73 and the actual amount received by the Applicant.

B. Decisions of the Administrative Tribunal of the International Labour Organization⁹

1. JUDGEMENT NO. 2120 (15 JULY 2002): BARRACLOUGH V. INTERNATIONAL ATOMIC ENERGY AGENCY¹⁰

Non-selection for promotion—SEC/NOT/1325 on employment of spouses—Contradictory legislation—Staff rule 3.03.5 on spouses not serving in same line of authority—Discrimination based on marital status and family relationship—International Covenant on Civil and Political Rights

The complainant joined the International Atomic Energy Agency (IAEA) in May 1997, at the P-3 level, in the Safety Co-ordination Section of the Department of Nuclear Safety, and, in April 1999, he applied for a P-4-level post in the Disposable Waste Unit of the Waste Safety Section, Division of Radiation and Waste Safety in the Department of Nuclear Safety, as advertised under vacancy notice No. 99/006. His wife was also employed by IAEA, in the same department but in different sections. The post for which the complainant applied was in the same section, but in a different unit and falling under a different hierarchical structure. Those responsible for the selection process were aware of this fact and nevertheless recommended the complainant for the post. However, the complainant had correctly inferred that he had not been appointed to the post when he learned that the Agency had advertised a new competition for the same post.

The complainant requested an administrative review by the Director General of the implied rejection. On 5 September 2000, the Director General informed the complainant that he had maintained his decision not to appoint any candidate to the post advertised under vacancy notice No. 99/006 and to readvertise the post under vacancy notice No. 2000/24. The complainant appealed against this decision to the Joint Appeals Board. The Director General, in a letter of 30 March 2001, again cited the reason for his decision of 5 September 2000—that the decision not to fill the post had taken into account “various statutory and policy requirements”—and added that these requirements included the need for gender balance and adequate representation of developing countries. The complainant appealed to the Tribunal.

In its consideration of the matter, the Tribunal noted that the Joint Appeals Board had found it to be a fact that the decision not to appoint the complainant to the post had been based on the provisions of SEC/NOT/1325, which dealt with the employment of spouses in the Agency. Paragraph 2 (c) read: “The spouse shall normally not be employed in the same department as the staff member ...”. The Tribunal further found that the evidence clearly justified that finding and the Tribunal would not interfere with it. However, the Tribunal recalled that it was only in his impugned decision of 30 March 2001 that the Director General stated that the original decision

had been motivated by other factors, in particular by various statutory and policy requirements such as adequate representation of developing countries and the need for gender balance, and had not been based on SEC/NOT/1325 alone. In the opinion of the Tribunal, that assertion, coming at the very end of the internal appeal process and in the impugned decision itself, was not convincing. Furthermore, in additional submissions filed at the Tribunal's request, the Agency appeared to concede that the principal, if not the only, relevant factor was the complainant's marital relationship.

The Tribunal agreed with the complainant's main argument that the provisions of SEC/NOT/1325, being subordinate legislation, were incompatible with the corresponding provisions of the primary legislation, namely, the Staff Rules, and in particular rule 3.03.5. This rule provided that a "husband or wife of a staff member may be appointed provided that the spouse was not given any preference by virtue of the relationship to the staff member", and further that the husband or wife of a staff member should not be assigned to serve in a post which is superior or subordinate in the line of authority to the staff member. Considering these two restrictions, the Tribunal pointed out that SEC/NOT/1325 purported to go much further than the Staff Rules and to impose a specific restriction on the hiring of spouses in the same department; it did not merely implement or clarify the staff rule, but it purported to extend its reach substantially, and, therefore, could not stand.

Moreover, the Tribunal observed that paragraph 2 (c) of SEC/NOT/1325 was unenforceable because it was contrary to fundamental principles of law, as the provision improperly discriminated between candidates for appointment based on their marital status and family relationship. In this regard, the Tribunal noted that discrimination on such grounds was contrary to the Charter of the United Nations, general principles of law and those which governed the international civil service, as well as international instruments on human rights. The Tribunal recalled article 26 of the International Covenant on Civil and Political Rights of 1966 which, although not strictly binding on the Agency, was relevant:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The Tribunal noted that the terms of the article were not limited ("... any ground such as ...") and that all forms of improper discrimination were prohibited. In the instant case, in the employment context, the fact that two staff members might be married to each other was not relevant to their competence or the capacity of either of them to fulfil his or her obligations.

As regards a remedy in the case, the Tribunal noted that the complainant's P-3 post had been reclassified to P-4 as of 1 January 2002, and that he

was being considered for appointment to that post at that level; since that was the same level as the post to which he had not been appointed owing to improper discrimination, the Tribunal considered that the complainant's main claim was no longer relevant. The Tribunal ordered the Agency to pay the complainant damages equal to the amount of the increased salary and other benefits which would have been attached to the post in the Disposable Waste Unit from 25 February 2000 (the first documented date of the original administrative decision not to appoint him) to the date of his appointment to P-4 or to the termination of his employment with the Agency, whichever should occur first. The complainant's costs, in the amount of 500 euros, were also awarded.

2. JUDGEMENT NO. 2125 (15 JULY 2002): LEMAIRE V.
INTERNATIONAL ATOMIC ENERGY AGENCY¹¹

Non-extension of appointment beyond retirement age—Non-extension must be based on proper reasons—Rejuvenation of staff

The complainant, who was born in July 1940, joined the staff of IAEA on 1 May 1980 under a fixed-term contract, which was extended six times. The last renewal stipulated that his services would be terminated on 31 July 2000. On 18 October 1999, the Director of the complainant's division sent a memorandum to the Director of the Division of Personnel requesting an extension of the complainant's contract until 31 July 2001, that is, beyond the normal age of retirement which, in his case, was 60. This request was rejected and the complainant appealed.

In its consideration of the matter, the Tribunal agreed with the Agency that the Director General had discretion in departing from the rule governing the normal age of retirement; however, the Tribunal observed that the decisions that were made must be based on proper reasons. Article 4.05 of the Staff Regulations stated:

“Staff members shall not normally be retained in service beyond the age of sixty-two years or—in the case of staff members appointed before 1 January 1990—sixty years. The Director General may, in the interest of the Agency, extend these age limits in individual cases.”

A memorandum of 26 June 1998 explains that extensions beyond retirement age should not be automatic, but that they must be justified on the basis of six criteria. In this regard, the Tribunal, while observing that the Joint Appeals Board—whose recommendation was followed by the Acting Director General—considered that the request submitted by the complainant's department had not specified whether three of these criteria had been satisfied, determined that it was clear from the highly detailed report attached to the request for an extension of contract that the request was based on the complainant's experience, which was of fundamental importance at a time when the safeguards system was undergoing extensive modifications and which was particularly necessary for the training

of new inspectors during the transition period. The request also indicated that the complainant had satisfied the criteria. Thus, in the view of the Tribunal, the grounds for refusing the request for an extension appeared to be highly questionable. As noted by the Tribunal the reason presented in the Agency's reply, which explained the impugned decision, stated that it wished to "rejuvenate the Agency's team of inspectors".

In the opinion of the Tribunal, although the Director General could determine the interests of the Agency, his decisions must be based on clear and coherent reasons, and in this case the reason given—that the request for an extension contained no indication as to whether any of the criteria stipulated in the memorandum had been satisfied—was not valid, and "rejuvenation" of the staff was too general to constitute a sufficient justification for the refusal of the complainant's request.

The Tribunal considered that since no measures could be envisaged for reinstating the complainant, the Tribunal awarded him damages, in an amount equal to the salary and benefits to which he would have been entitled had he remained in service from 1 August 2000 to 31 July 2001, plus the restoration of his pension rights for the aforementioned period. Furthermore, since his claim had been successful, the Tribunal also awarded the complainant costs in the amount of 2,000 euros.

3. JUDGEMENT NO. 2127 (15 JULY 2002): RUGGIU V.
EUROPEAN PATENT ORGANISATION¹²

Discontinuation of orphan's pension payments—Question of whether a child was a dependant of widowed staff or whether the deceased was staff's spouse—Purpose of orphan's pension payments

The complainant joined the staff of the European Patent Office in 1979 as an examiner, currently employed at grade A5. His spouse, the mother of his two children, died on 2 July 1991 and, in accordance with article 25 (4) of the Pension Scheme Regulations, the Office paid an orphan's pension to each of his two children with effect from 1 August 1991. Following the marriage of the complainant in October 1998, the Remuneration Department informed him by a letter of 4 November that the payment of the orphan's pension would cease effective November 1998.

In consideration of the merits of the case, the Tribunal recalled articles 25 and 26 of the Pension Scheme Regulations, which read:

"Article 25

"RATE OF PENSION

"...

"(4) The children or other dependants of a widowed staff member whose deceased spouse was not employed by one of the Organisations listed in article 1 shall each be entitled to [an orphan's] pension of twice of allowance for a dependent child

“Article 26

“CESSATION OF ENTITLEMENT

“Entitlement to a pension under article 25 shall cease at the end of the month in which the child or other dependant ceases to qualify for the dependants’ allowance under articles 69 and 70 of the Service Regulations for permanent employees of the Office.”

The Tribunal further recalled rule 25.4/1 of the Implementing Rules, which read:

- “i) The orphan’s pension mentioned in this article (children or other dependants of a staff member who is the widower, or widow, of a spouse not a staff member of a Coordinated Organisation) shall be due only if the staff member became widowed while in service ...
- “ii) If the staff member remarries or leaves the Coordinated Organisations, the orphan’s pension shall cease to be paid.”

The Tribunal noted that the complainant had submitted that article 26 had been violated because it defined in an exhaustive manner the grounds for cessation of entitlement to an orphan’s pension, and these grounds did not include remarriage of the staff member. Consequently, rule 25.4/1, which was of lesser authority than article 26, contravened that article.

However, it was the view of the Tribunal that, pursuant to article 25 (4), it was not a condition of entitlement to the pension that the deceased be one of the child’s parents; indeed, the granting of the pension did not depend on the existence of a formal family relationship with the deceased, but merely on the fact that the child was a dependant of the widowed staff member of the Office. By contrast, the complainant had argued that the entitlement to the pension was subject to the condition that the deceased was his or her spouse.

The Tribunal also considered that the conditions governing entitlement to the orphan’s pension also reflected its purpose, in that the entitlement had the effect of doubling the dependent child’s allowance in an obvious desire to assist the widowed staff member, who could no longer rely on the help previously given by his or her spouse.

Thus, in the opinion of the Tribunal, since the orphan’s pension could only be granted to children of a staff member on condition that he or she became widowed, it seemed logical to consider that this condition was no longer satisfied in the event that the latter married. Consequently, the Implementing Rules did not contravene the provisions of article 26 of the Pension Scheme Regulations. The complaint was therefore dismissed.

4. JUDGEMENT NO. 2129 (15 JULY 2002): ADJAYI AND OTHERS V.
WORLD HEALTH ORGANIZATION¹³

Reduction of travel per diem rate—Difference between determination of salaries and determination of allowances granted for specific pur-

pose—Importance of basing decision on objective considerations even if legal framework was vague or non-existent—Acquired rights and travel allowance

Seventy-seven General Service staff members of the World Health Organization (WHO) recruited locally by the WHO Regional Office for Africa in Brazzaville contested the decision taken by the Organization's Director-General on 12 December 2000 rejecting their appeal against the decisions of 1998 and 1999 to reduce the rate of the travel per diem granted to them as a result of the relocation of the Regional Office to Harare and of their stay in that city.

Following the outbreak of hostilities in June 1997 in the Republic of the Congo, a decision was taken to close temporarily the Regional Office in Brazzaville and to relocate it to Harare in September 1997, initially for two years; this was subsequently extended. The complainants continued to receive their salary as if they were still assigned to Brazzaville and, since they were on travel status in Harare, they received a travel per diem: for the first 60 days the per diem was set at 100 per cent of the rate for Harare, and then reduced from the third month onwards to 75 per cent of that rate, in accordance with paragraph VII.2.43.I of the WHO Manual. Then, on 17 July 1998, the locally recruited Brazzaville General Service staff serving in Harare were informed, by information circular IC/98/22, that it had been decided that they would remain on travel status until further notice and that they would continue to receive a travel per diem, but that, in view of the extended nature of the situation, they would receive a "special" per diem rate of 50 per cent of the rate normally applicable. On 17 June 1999, information circular IC/99/21 announced, inter alia, that the locally recruited staff would receive "an ad hoc allowance" of US\$ 1,000 per month, effective 1 August 1999.

On the merits, the complainants submitted five pleas: (1) the decision to modify the travel per diem rate was arbitrary and did not satisfy the criteria of stability, foreseeability and transparency established by the Tribunal's case law in order to limit the discretion of organizations in adjusting staff pay; (2) the decision contravened the principle of equal treatment; (3) it was contrary to the undertakings given by the Administration, from which the complainants were entitled to expect fair treatment; (4) it was based on errors of fact and on critical factual omissions; and (5) it breached the acquired rights of the staff members concerned.

In its consideration of the matter, the Tribunal noted that WHO claimed that the WHO Manual, paragraph VII.2.45, which stated, "if necessary, special per diem rates, which may be higher or lower than the standard rate, may be established ... for regional activities, by the regional director concerned ...", gave the Regional Director a discretionary power to set a reduced per diem rate in order to take into account certain objective factors. The complainants argued that this interpretation amounted to conferring a totally ar-

bitrary power on the Administration, given that the applicable provisions did not set any limits on the scope of the Administration's power to reduce the per diem and that, according to the Tribunal's case law (see Judgement No. 1821, for example), adjustments to international civil servants' salaries must satisfy objective criteria of stability, foreseeability and transparency. However, the Tribunal considered that this line of precedent—concerning the determination of staff salaries, which was necessarily governed by very strict rules—was not entirely applicable to the determination of allowances granted for a specific purpose, such as that of covering expenses incurred by staff members on travel status.

The Tribunal further considered that, even if the Administration claimed to be acting in the exercise of its discretion, and although the legal framework surrounding its action remained vague or non-existent, the Administration must base its decisions on objective considerations and avoid breaching any of the guarantees protecting the independence of international civil servants. In the instant case, if the complainants continued to receive their salaries at Brazzaville rates, and since the travel per diem was merely intended to cover the essential expenses of a staff member on duty travel, including lodging and food, a high rate of travel per diem could not be justified where duty travel, which by its nature implied that the staff member would continue to work primarily at his or her original duty station, lasted for two years or more. Although it would have been preferable to have had precise texts setting out the circumstances in which a travel per diem could be replaced by a flat-rate allowance, given the exceptional situation faced at the time by the locally recruited Brazzaville staff, who were still considered to be on travel status in Harare, the solution adopted by the defendant was not unreasonable.

Likewise, the Tribunal did not find merit in any of the other complainants' claims. Regarding the issue of a breach of acquired rights, the complainants had asserted that their fundamental conditions of employment were affected by a decision which greatly reduced their purchasing power. However, in the opinion of the Tribunal, the complainants had overlooked the fact that their basic salary was not affected, and it was perfectly obvious that the reduction of an allowance intended to cover travel expenses did not alter their fundamental conditions of service.

Since the complainants' pleas failed, the Tribunal rejected their claims in their entirety.

5. JUDGEMENT NO. 2139 (15 JULY 2002): UNDERHILL V.
INTERNATIONAL ATOMIC ENERGY AGENCY¹⁴

Non-extension of appointment—Right of staff member to resort to all internal and jurisdictional remedies available should not prejudice staff member—Exercise of discretion required adherence to procedural safeguards

The complainant, who was born in December 1940, was recruited by IAEA on 11 March 1993. His appointment, which was initially for three years, was extended on several occasions. A letter of 23 July 1998, offering the complainant an extension until 10 March 2000, indicated that this would be the “final” extension and that the appointment would not be “extended, renewed or converted to another type of appointment”. The Director of the division in which the complainant was employed indicated on 22 September 1999 that he considered it “highly desirable” for work programming reasons that the complainant’s employment should continue until 31 December 2000. On 15 November 1999, the Administration granted a further extension up to that date, indicating once again that this would be the last. On 20 December 1999, the complainant requested that his appointment be extended to the date when he would have reached the retirement age applicable to him. This request was denied, and the complainant lodged an appeal, but withdrew it on learning that the Director General had offered him a further extension until 30 June 2001, while reaffirming that this would be the last. The complainant renewed his request for an extension to retirement age, but was refused. He appealed to the Joint Appeals Board, which recommended that he be extended until 31 March 2002.

Before the Tribunal, the complainant challenged the decision of the Director General not to follow the recommendation of the Board. The complainant contended that the Deputy Director General had initially been in favour of extending his appointment, but reversed his position when he learned that the complainant had appealed to the Joint Appeals Board. In this regard, he referred to a memorandum dated 27 February 2001, in which his Head of Section set out the reasons why it was essential that he should remain in service until December 2002, and said that the Deputy Director General simply returned the memorandum to the Head of Section. He added that the memorandum had not been submitted to the Board. Moreover, neither that document nor letters from representatives of member States, written in support of his request for an extension, had been brought to the attention of the Director General. The complainant concluded that the procedure followed by the Joint Appeals Board had been flawed, even though its recommendation was partially in his favour, and that the Director General’s decision, taken on the basis of an incomplete file, must therefore be set aside. The Agency disputed these claims, and explained that the Agency had told the complainant on three occasions that the extensions granted to him would be final and that notice SEC/NOT/1484 in principle limited the term of service to seven years, even though this rule had been applied with some flexibility.

The Tribunal reasoned that, even though the complainant had not proved that the Director General’s decision of 30 March 2001 was taken on the basis of incomplete information, it seemed clear that the Board had not been provided with the memorandum from the Head of Section, since the Deputy Director General had simply sent it back. In the view of the

Tribunal, this memorandum was essential for assessing the situation within the complainant's unit and the difficulties that might be encountered in the implementation of the work programme as a result of his departure.

The Tribunal found that the complainant's allegation that the Deputy Director General, who had initially been in favour of his extension, changed his view after learning that the complainant had gone to the Joint Appeals Board was substantiated by the written evidence and in any case was not denied by the Agency. The Tribunal emphasized that the right of international officials to resort to all internal and jurisdictional remedies available to them without detriment to their career was an essential guarantee to which it attached the greatest importance.

In the present case, the Tribunal considered that the appeal lodged by the complainant against the decision not to extend his appointment should not in any way have been prejudicial to him. The reasons which led his Head of Section to stress the need for an extension until December 2002 in the memorandum of 27 February 2001 should have been brought to the attention of the Board. Moreover, the Tribunal recognized that the Deputy Director General, who had initially been in favour of the extension, had decided to withdraw his support and, thus, the Deputy Director General, whose opinion was essential to an informed decision by the Director General, changed his mind for reasons completely alien to the interests of the service. Although the Director General had the discretionary power to waive the seven-year rule again for the complainant, in exercising that discretion he was bound to observe all the procedural safeguards granted to international civil servants and he failed to do so in the present case.

The Tribunal therefore set aside the impugned decision and ordered the Agency to restore the rights which the complainant would have enjoyed since the date on which appointment came to an end, and to reinstate him in his post until 8 December 2002. It granted him moral damages, which it set at 2,000 euros, and awarded costs at 500 euros.

6. JUDGEMENT NO. 2151 (15 JULY 2002): MIKES, MOHN AND ZHANG V. ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS¹⁵

Non-classification of post from P-3 to P-4—Question of classification exercise based on proper job description—Issue of experience—Importance of specifying methodology in classification exercise—Issue of intervention into case

At the material time, the complainants held posts as inspectors at grade P-3 at the Organisation for the Prohibition of Chemical Weapons (OPCW). Following a classification review of most posts in the organization, the results of which were announced on 6 August 1998, their classification at grade P-3 was maintained. The complainants appealed this decision.

In consideration of the merits of the case, the Tribunal observed that the complainants had not denied that decisions concerning the classifica-

tion of posts lay within the discretion of the Director-General, but rightly recalled that, according to the case law, such decisions must not show any procedural flaw or error of law, nor any mistake of fact leading to a mistaken conclusion by the competent authority. In the present case, they submitted that the Administration did not provide them with the job description on the basis of which their posts were maintained at grade P-3 and that the only job description supplied was incorrect on several points. They added that in classifying their posts at grade P-3 the consultant who had been employed to carry out the classification exercise followed no methodology, but merely explained that the differences in experience between P-3 and P-4 inspectors warranted the difference in grade. They claim that this procedural flaw also amounted to an error of law, since the classification of posts must be independent of the individual “particularities” of their incumbents, including their experience. Lastly, they alleged that a wrong conclusion was drawn from the facts, as there was much evidence that the duties and responsibilities of inspectors classified at grades P-3 and P-4 were similar and that the complainants mainly performed P-4-level duties.

While the Tribunal would not undertake a job classification exercise, which lay solely within the authority of the defendant, it observed that the succession of errors made in this case, as acknowledged both by the Classification Review Committee and by OPCW itself, left room for serious doubts concerning the objectivity of the rationale for the classifications that were being challenged. The complainants were entitled to be provided with the job description on which the consultant’s recommendation had been based, and the evidence clearly showed that the document supplied to one of the complainants on this matter was incorrect. The Classification Review Committee admitted the error but, at the same time, indicated that the absence of specific documentation was insufficient to warrant a change in the classification. However, the Tribunal found that the complainants must not suffer any injury from the organization’s inability to reconstitute the elements on which the classification had been made.

The Tribunal admitted that the complainants’ assertion that they performed P-4-level duties most of the time was not in itself a reason for granting them that grade. Moreover, in the case of the inspectors, it was not out of the ordinary for posts at different levels to be differentiated by taking into account objective criteria related to the nature of the functions performed and the experience required to fulfil the respective duties.

While it was not the role of the Tribunal to determine whether the three complainants were entitled to be awarded the grade of P-4, it had to assess the effects of the errors committed and of the inability of OPCW to indicate precisely the methods followed by the consultant in his recommendation to maintain the complainants’ posts at grade P-3. The organization must therefore conduct a new procedure for the classification of the posts in question and reach lawful decisions. The Tribunal also awarded costs in the amount of 2,000 euros to the complainants.

The Tribunal also considered the issue of 27 OPCW staff members applying to intervene in the instant case. In the Tribunal's view, the fact that two of the staff members filed no internal appeal did not prevent them from applying to intervene. The only issue to be resolved was whether the organization's decisions on post classification applied to them and, in this regard, the Tribunal observed that their names were not on the list of the staff members to whom the subject decision was addressed. That being so, the present judgement should be extended to them only insofar as they have an interest, on account of their de jure and de facto position regarding post classification, in benefiting from the Tribunal's decision.

C. Decisions of the World Bank Administrative Tribunal¹⁶

1. DECISION No. 261 (24 MAY 2002): SYED GHULAM MUSTAFA GILANI V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT¹⁷

Complaint against redundancy—Duty to isolate real issues of case—Importance of exhaustion of all internal procedures—Importance of timely review of decision—Limited review of redundancy decision—Issue of outdated skills—Staff rule 7.01 on redundancy—Adequate notice to staff member of his redesigned post and possible redundancy—Waiver of deadline for submission of application for post

The Applicant joined the Bank in 1983 as a librarian (Level 5, Step II) at the Resident Mission in Islamabad. His post was regraded to Level 6 in May 1990, and regraded to Level 16, as a result of a global job grading exercise. The Applicant complained, arguing that Level 16 was not indicative of his status, long meritorious service and experience of 27 years. The Applicant was subsequently placed on a six-month performance improvement plan (PIP) and he improved his performance to a satisfactory level, but he also was informed that he would be expected to further improve his communication and electronic information technology skills. In November 1999, it was recommended that an electronic library be established using the country office website as a prototype. It also was recommended that a talented and experienced librarian be hired with experience in Web development and electronic database design to run the electronic library. In February 2000, the Applicant was informed that his present position was being abolished and that he could either apply for the redesigned position, appeal to higher management, or accept mutual separation. The Applicant sent an e-mail to the President of the Bank on 24 February 2000, and applied for the redesigned post some two months after the stated deadline for submission of applications.

On 18 April 2000, the Applicant filed a statement of appeal with the Appeals Committee, raising a number of complaints. On 20 April 2000, the Applicant was sent a notice of redundancy. On 23 May 2000, the Respondent submitted to the Appeals Committee a jurisdictional challenge arguing that the only issue that had been appealed in a timely manner concerned the decision to declare the Applicant's position redundant. After its review of the matter, the Appeals Committee decided to accept jurisdiction over not only the redundancy issue but also a number of other issues raised by the Applicant.

In his application to the Tribunal, the Applicant did not contest specific decisions but requested that the decision of the Appeals Committee be reviewed in the light of the Applicant's requests before the Committee. In his reply, however, the Applicant clarified that he was contesting the termination of his employment, in addition to the pay differential which he allegedly suffered from the date (6 May 1990) on which it was acknowledged that he had been misclassified.

In its consideration of the matter, the Tribunal observed that as it had ruled in the past, the Appeals Committee was not a judicial body whose decisions could be challenged before the Tribunal (*Carter*, decision No. 175 (1997)). Rather, the Tribunal's task was to decide whether the Bank had violated the contract of employment or terms of appointment of the Applicant (*Lewin*, decision No. 152 (1996)). As the Tribunal's function was not to review the report of the Appeals Committee, the Tribunal considered that the application had been misdirected. However, the Tribunal also had ruled that it was its duty, as it was the duty of every international tribunal, to isolate the real issue in the case and to identify the object of the claim (*Nuclear Tests (Australia v. France), Judgement of 20 December 1974, I.C.J. Reports 1974*, p. 262). In doing so in the present case, the Tribunal noted that the Applicant was in effect contesting before the Tribunal the same decisions or actions of the Bank which the Applicant had already contested before the Appeals Committee. The Tribunal recalled that the Committee had declined to review the majority of those decisions on the basis that it had no jurisdiction over them, accepting jurisdiction only over decisions or actions of the Bank relating to the declaration of redundancy of the Applicant's employment, and, after examining such decisions, had recommended that the Applicant be denied the relief requested. The Vice-President of Human Resources decided, on 18 April 2001, to accept that recommendation.

In examining the jurisdictional issues of the case, the Tribunal noted the importance of the statutory exhaustion requirement. Regarding a number of issues contested by the Applicant, such as his 1989 job reclassification, the global job grading of 1997 and his 1998 PIP, the Tribunal considered that the Applicant had never requested timely review of the decisions, pursuant to staff rule 9.01 (Administrative Review), which required that the staff member, as a first step, request such review within 90 days of receipt of the written decision. Furthermore, the Applicant and the

Respondent had not agreed to submit the application directly to the Tribunal, nor had the Applicant invoked any exceptional circumstances that prevented him from requesting administrative review of these decisions in a timely manner. Therefore, the Tribunal found that those issues were inadmissible, pursuant to article II (2) (i) of its Statute.

In consideration of those claims that were admissible, the Tribunal stated that it had held in the past that the decision to declare a staff member's position redundant was within the discretion of the Bank, subject only to limited review, and that the Tribunal would not interfere with the exercise of such discretion "unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, [or] improperly motivated. ..." (*Kocic*, decision No. 191 (1998), citing *Montasser*, decision No. 156 (1997).) The Tribunal, at the same time, also has held that:

"The Bank must be free to evolve, and therefore to adjust to new needs in its client countries, and corresponding new requirements in its activities. The fact that a staff member's skills have been beneficial to the Bank in the past does not insulate him or her from the risk that the relevant work group requires a 'skills mix' ... into which he or she does not fit." (*Mahmoudi (No. 2)*, decision No. 227 (2000).)

The Tribunal recalled that the Applicant claimed that the redundancy decision was a device to remove him from his position owing to his complaints about job classification in the past, and that management invited the Manager, who suggested that an electronic library be established, to submit a report that contained factual errors in order to get rid of the Applicant. The Tribunal, however, found no evidence in the record substantiating these claims. On the contrary, a review of the record and, particularly, of the report prepared by the Manager, South Asia Region Information Management Unit, showed that there was a growing need to strengthen the information technology capacity in the Islamabad office "by providing input to knowledge management, which was the Bank's competitive advantage and an increasingly important role for the organization". It was in response to this need that the new Country Director for Islamabad invited the Manager to assess the feasibility of establishing an electronic library. The record also indicated that the Applicant himself was aware of a transformation in information technology from hard copies to Web pages and that he needed to study the system adopted at headquarters to acquaint himself with the Bank's approach to information technology. Finally, the Tribunal noted that the decision to declare the Applicant's position redundant was not taken by one person alone, but only after discussions among a number of people, including the Applicant's supervisor, the Islamabad Front Office Human Resources Officer, the new Country Director for Pakistan and the Acting Vice-President, South Asia Region.

The Tribunal, in considering whether the appropriate procedure had been followed in the implementation of the Applicant's redundancy, re-

called that his position had been declared redundant pursuant to staff rule 7.01, paragraph 8.02 (c), which stated:

“Employment may become redundant when the Bank Group determines in the interests of efficient administration that:

“ ...

“(c) A position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position.”

In the view of the Tribunal, it was indisputable from a review of both job descriptions that the occupational standards for the job of the Librarian had significantly changed. The Applicant’s old job description was that of a traditional Library/Information Assistant, while the new position description had a strong focus on information technology. Here, pursuant to provision 8.02 (c) prescribed, the position had been so substantially redesigned that the Applicant’s qualifications did not meet the requirements of the redesigned position.

In interpreting provision 8.02 (c) of staff rule 7.01, the Tribunal found that in the instant case the new position had been designed prior to the declaration of the redundancy, in contrast to the facts of *Mahmoudi (No. 2)* and in *Yoon (No. 2)*, decision 248 (2001), where the Tribunal found inventions of post hoc rationalizations for redundancy decisions.

The Tribunal also examined whether or not the Applicant in the instant case had been properly notified of the redesigning of his position, the possibility of his redundancy and the opportunity to compete for the new position, as required by *Garcia-Mujica*, decision No. 192 (1998). In that case, the Tribunal stated:

“Although staff rule 7.01 does not provide for a specific advance warning about the issuance of a notice of redundancy, a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work.”

As pointed out by the Tribunal, the Applicant had received a copy of the Unit Manager’s report and was given the opportunity to make comments on it. While the report did not explicitly mention the possible redundancy of the Applicant’s position, nevertheless, in the opinion of the Tribunal, the stated purpose of the Manager’s 1999 mission in Islamabad to assess the feasibility of establishing an electronic library in the World Bank office and the recommendation to hire an Electronic Resources Librarian with experience in Web development and electronic database design to run it, as well as the description of the duties, accountabilities and selection criteria for the Electronic Resources Librarian, adequately put the Applicant on notice of the possibility of the redundancy of his position. Furthermore,

on 11 February 2000, the Human Resources Officer notified the office's staff members of the approval of the redesigned position by the Islamabad Office's Information Technology Committee. And, as acknowledged by the Applicant, on 14 February 2000, he met with the Human Resources Officer who informed him that his position would be declared redundant and that he would have, among other options, the possibility to apply for the redesigned position or to accept mutual separation.

The Tribunal recalled that the Applicant applied for the redesigned position on 17 April 2000 (three days before he was officially notified in writing of the decision to declare his position redundant), although the closing date for the vacancy for the Electronic Resources Librarian was 26 February 2000. The Bank had stated that it considered his application, nonetheless, because he was an internal candidate. The Tribunal found that the fact that the Applicant was late in applying for the redesigned position was not because the Bank had not notified him early enough in this respect.

For the above reasons, the Tribunal decided to dismiss the application.

2. DECISION NO. 272 (30 SEPTEMBER 2002): C. v. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT¹⁸

Transmission of documents to the United States Department of Justice—Staff rule 2.01 on the release of information outside the Bank Group—Specific notice versus awareness of referral of information—Documents not specifically covered by staff rule—Treatment of confidential documents in a criminal investigation—Issue of access of accused to privileged documents—King decision on rights of staff member accused of misconduct—Tribunal's consideration of matter during ongoing external criminal investigation—Tribunal's reservations regarding unnecessary secretive procedures—Staff rules 11.01 and 8.01 regarding claim of monies owed to staff member

The Applicant's request for anonymity was granted by the Tribunal, pursuant to an Order of 8 February 2002. The Applicant's career in the Bank, the events leading up to his termination, the referral of documents to the United States Department of Justice, the Applicant's complaints to the Appeals Committee and the Committee's report on the matter were all discussed by the Tribunal in the jurisdiction decision, C., decision No. 268 (2002). In the application before the Tribunal in the instant case, the Applicant contested the following decisions by the Respondent: (1) to refer the case to the Department of Justice of the United States for prosecution without notifying him; (2) to deny him an accounting of reimbursable monies and to withhold compensation; (3) to deny him access to relevant documents and evidence necessary to his defence; and (4) to withhold from him information in his personnel file while failing to inform him of its transfer to third parties.

In consideration of the matter, the Tribunal observed that the merits phase of the case was in essence concerned with the interpretation of staff rule 2.01 on the release of information outside the Bank Group and, particularly, whether: (1) the information in question was validly withheld from the Applicant; (2) this situation fell within the exceptions defined in the rule; and, if so, (3) it was “reasonably possible” to give the notification required by that rule.

As the Tribunal explained in its decision on jurisdiction, the disclosure requirement imposed upon the Bank by this staff rule covered both the fact of referral and the content of what was being referred. And, according to the Tribunal, it was clear from the record that the Applicant was aware of the fact of a referral being made to the Department of Justice. Even though this was not the result of specific notification to him, as explained by the Tribunal, his awareness of the referral transpired from the general context in which the Bank conducted its investigation and pursued its cooperation with the United States and Swedish authorities.

Regarding the content of the referral, the Tribunal concluded in its decision on jurisdiction that the Applicant became only partially aware on 14 May 2001 of what information had been released to the Department of Justice, his information emerging largely through communications between his attorney and the Department. The Tribunal, interpreting staff rule 2.01, stated that the Applicant’s personnel record could be transmitted to the Department of Justice and, also pursuant to the staff rule, he was notified of the release “as soon as reasonably possible”. Although not expressly itemized in the rule, documents involving the Applicant’s travel arrangements, hotels, expenses and similar records, in the opinion of the Tribunal, related to the official business of the staff member and therefore qualified as “other personnel information”. The Tribunal noted that the Applicant had not been notified of this release, but that this omission could hardly jeopardize the Applicant’s defence before either the Bank or the Department of Justice, since a copy of this information must have been in the Applicant’s possession as it had originated in his own submissions to the Bank. Concerning documents relating to the operational records of the Bank—and nothing in them related to the accusations against the Applicant—the Tribunal considered that they could be released and without the knowledge of the staff member.

The Tribunal recalled the World Bank Policy on Disclosure of Information of March 1994, as revised effective 2002, which established constraints on disclosure of documents that go materially beyond the “personnel” type of document envisaged under staff rule 2.01. In particular, the following constraints were relevant in the instant case: (1) documents and information provided to the Bank only “on explicit or implied understanding that they will not be disclosed outside the Bank, or that they may not be disclosed without the consent of the source; or even, occasionally, that access within the Bank will be limited” must be treated accordingly by

the Bank; (2) documents and records that are subject to the attorney-client privilege, or whose disclosure might prejudice an investigation, shall not be made publicly available; and (3) appropriate safeguards must be maintained in order to protect the personal privacy of staff members and the confidentiality of personal information about them, all in accordance with the Principles of Staff Employment.

Regarding the Applicant's bank and credit card statements, the Tribunal observed that while the staff rules did not expressly allow for the disclosure of such personal information, and they did not forbid it, the authorization given by the Applicant to make this information available to the Bank was not expressly conditioned; and this raised the issue of an implied understanding that it should not be disclosed outside the Bank pursuant to Bank policy. In examining the matter, the Tribunal considered whether the disclosed information was fully available to the Applicant himself, as it had originated in his own personal business and his ability to defend himself was not jeopardized by the disclosure, and whether the Department of Justice could in any event have subpoenaed the records in the ordinary process of discovery available in the United States legal system. The Tribunal concluded that in the light of the nature of these records their release was not precluded by the terms of the Bank's policy in the context of this kind of investigation, and although it would have been possible to notify the Applicant of disclosure sooner, here again the omission had not caused specific injury to the Applicant.

Another category of document released to the Department of Justice contained summaries of various interviews conducted in the context of the Bank's investigations, including interviews with the Applicant and other persons (inside and outside the Bank) implicated in the relevant events. In examining this issue, the Tribunal, while noting that the documents did not derive from a relationship between the Applicant and his private attorney (which would certainly be excluded from disclosure), but from a relationship between the Applicant and internal and external investigators, also noted that it was evident that the confidential status or marking of the documents would not preclude their release to a third party investigating the matter. The Tribunal, while recognizing that there was no specific rule authorizing such disclosure and there was a policy (as of 2002) constraining such disclosure, concluded that because the documents related specifically to the investigation and the constraint focused more on public disclosure than on presumably confidential disclosure to national authorities, such release was permissible.

Another issue examined by the Tribunal concerned the question whether principles of due process required the Applicant to have access to the privileged documents disclosed to the Department of Justice. In this regard, the Tribunal noted that while the other categories of document were accessible to the Applicant, he could have had no knowledge of these privileged records, not even of the records of his own interviews—which

could have had a combined effect of implicating the Applicant in serious criminal offences—and that, furthermore, the need to provide an accused staff member with substantive notice of the information proffered against him or her was demonstrated by the facts of the case.

The Tribunal further recalled the detailed standards for the handling of misconduct under staff rule 8.01 in *King*, decision No. 131 (1993), in which it assigned particular importance to the conduct of the investigation, to the right of the accused staff member to respond, and to questions of due process. The Tribunal specifically held that “the entitlement of the staff member to respond presupposes an exact knowledge of the charge made against him and extends to the right to give a properly considered answer to, or comment upon, every aspect of the case made against him”. The Tribunal was not unsympathetic to the Respondent’s argument that during investigations of a criminal nature there was a danger that the accused might attempt to destroy evidence, flee the jurisdiction, or harass and intimidate witnesses, thus justifying withholding information, but here the Applicant had appeared to have cooperated fully with both the Bank and the Department of Justice, and the documents concerned could not in any way be destroyed or tampered with by the Applicant as they were already in the hands of the Bank and, later, of the Department of Justice. Moreover, the Tribunal, agreeing with the Applicant that in criminal investigations the standards applied must be construed more strictly than would be the case in matters that do not as seriously affect a staff member’s reputation and employment prospects, ordered that specific disclosed documents be made available to the Applicant.

Concerning the Bank’s questioning of the Tribunal’s consideration of administrative matters internal to the Bank while law enforcement agencies were conducting a criminal investigation of the same matter, the Tribunal observed that due process within the Bank did not necessarily prejudice national criminal investigations. On the contrary, the accused might be better able to address the questions put to him or her by national authorities if he or she had all relevant information concerning him or her and did not have to engage in guesswork—as the Tribunal noted had happened in the instant case. Furthermore, strict enforcement of due process also would likely avoid accusations of a general nature unsupported by specific evidence that could mislead the national authorities. The Tribunal had reservations with respect to unnecessarily secretive procedures, which tended to result in unfair accusations and investigations.

The Tribunal had decided in the jurisdictional phase that it could determine whether the claim for monies allegedly owed by the Bank to the Applicant should be governed by staff rule 11.01, which allowed for a three-year time period for such claims, or by staff rule 8.01, which provided for deductions or forfeitures from pay imposed as disciplinary measures. The Respondent had argued that any claim under disciplinary measures should fall under staff rule 8.01 and thus the normal 90-day period. In deciding

the issue, the Tribunal stated that it was not necessary to reach a determination on whether there was misconduct and whether the Applicant had been rightly terminated, but rather whether the monies allegedly owed to the Applicant were included within those forfeitures allowed under staff rule 8.01. If the answer was affirmative, staff rule 8.01 applied; if not, staff rule 11.01 applied.

Regarding monies related to travel for the Bank (\$1,600), the Tribunal determined that this must be reimbursed, pursuant to staff rule 11.01, because these monies related to work performed by the Applicant for the Bank. The annual leave accrued by the Applicant (\$25,200) must also be paid as this was part of the compensation of a staff member, in the opinion of the Tribunal. The separation grant (\$20,300), however, was not part of the Applicant's compensation or an amount related to operational expenses, and could legally be withheld from the Applicant in case of termination under staff rule 8.01 ("Disciplinary measures"). As the Tribunal had observed, this claim was governed by the ordinary 90-day exhaustion rule rather than the three-year time period established by staff rule 11.01 and was therefore time-barred in the instant case.

In determining remedies, the Tribunal was of the view that there was no doubt that the Bank's withholding of certain information from the Applicant, simultaneous with the referral of such information to the Department of Justice for prosecution, had impaired the Applicant's ability to defend himself. The process was contrary to the standards of due process applicable to accusations of misconduct against staff members as laid down in the staff rules and clarified by the Tribunal on more than one occasion, and therefore the Tribunal awarded damages in the amount of \$150,000 net of taxes, as well as costs in the amount of \$12,000.

D. Decisions of the Administrative Tribunal of the International Monetary Fund¹⁹

DECISION NO. 2002-2 (5 MARCH 2002): MS. "Y" (No. 2) v.
INTERNATIONAL MONETARY FUND²⁰

Review of decision upholding conclusions of ad hoc discrimination review team regarding grading and subsequent abolition of post—Importance of timely review and exhaustion of administrative remedies—Question of de novo review of merits by the Tribunal—Question of Fund's discretionary authority to fashion an alternative dispute resolution mechanism—de Merode decision on reviewing exercise of discretionary authority—Review of informal proceedings versus formal proceedings

The Applicant was employed as an Editorial Clerk by the International Monetary Fund on 1 July 1971, and was promoted to a Professional position as Editorial Officer in 1983. In 1987, after she appealed her job grade, she was promoted to grade A11, which grade she still held in 1995, when the position of which she was the incumbent—as Assistant Editor—was abolished.

The Applicant was advised of the options available to her under the Fund's policy governing abolition of posts and, in accordance with that policy, efforts were made over a six-month period to find her an alternative position. In addition, on an exceptional basis, arrangements were made for Ms. "Y" to be assigned to a temporary assignment position for an initial period of 10 months, later extended for an additional four-month period through the end of February 1997. In addition to the 120-day notice period and the 22 1/2-month separation leave provided by the Fund, Ms. "Y" was "bridged" to an early retirement pension and lifetime access to the Fund's health insurance, effective 31 March 1999.

In response to the Director of Administration's 28 August 1996 Memorandum to Staff, the Applicant, on 30 September 1996, requested review under the Discrimination Review Exercise (DRE) on the grounds that her Fund career had been adversely affected by discrimination based on profession, gender and age, which she contended had affected the grading of her position and culminated in the abolition of her post. DRE was a special, one-time review of cases of alleged discrimination that were filed with the Director of Administration during a narrow time frame, between 28 August and 30 September 1996. DRE had been initiated by the Fund to investigate and remedy, through an alternative dispute resolution mechanism, instances of past discrimination that had adversely affected the careers of Fund staff.

The conclusion reached by the team that had conducted the DRE review was that there was no evidence to support the allegation that the grading of the Applicant's position or the abolition of her post was influenced by factors of discrimination. Thereupon, the Applicant, by letter dated 27 January 1998, requested the Director of Administration to conduct a review of the decision. After the Director of Administration, on 8 May 1998, advised the Applicant that she fully concurred with the review team's recommendation, the Applicant brought the matter before the Fund's Grievance Committee, which subsequently concluded that the Applicant had failed to show that the findings and conclusions of the discrimination review team (and their affirmation by the Director of Administration) were arbitrary, capricious or discriminatory, or were procedurally defective in a manner that substantially affected the outcome. The Fund management accepted the Committee's recommendation that her claims be denied on 18 April 2001. However, it was the 8 May 1998 decision of the Director of Administration that was now before the Tribunal.

In its consideration of the case, the Tribunal addressed the question of the scope of its review of the case: (1) a *de novo* review of the merits of the Applicant's claims of discrimination, which she contended were not fully

and fairly examined under the DRE process; or (2) as the Respondent contended, a review that was limited to the fairness of the conduct of the DRE process itself. The Respondent had argued that a review of the underlying claims by the Tribunal would not be appropriate because the Applicant had failed to raise these claims in a timely manner under the appropriate administrative review procedures (General Administrative Order No. 31), but that the Fund could legitimately create an alternative review process to consider otherwise time-barred claims, such as the DRE process.

In the earlier case of Ms. “Y”, Judgement No. 1998-1, the Tribunal had emphasized that the ad hoc review had not conferred new rights, and had not replicated or replaced the grievance procedure. It had squarely rejected any suggestion that because Ms. “Y”’s allegations of discrimination had been subject to DRE, they could be reviewed by the Tribunal as if they had been pursued on a timely basis through Order No. 31.

The Tribunal also recalled the value of timely administrative review to the reliability of later adjudication by the Tribunal. International administrative tribunals had emphasized the importance not only of the exhaustion of administrative remedies but also that the process be pursued in a timely manner.

At the same time, since the Applicant challenged the 8 May 1998 decision of the Director of Administration upholding the conclusion of DRE that the Applicant’s career had not been adversely affected by discrimination, the Tribunal was of the view that examination of that conclusion necessarily entailed some consideration of whether the Applicant’s career had suffered discrimination. That consideration, the Tribunal explained, could be distinguished from the de novo examination by the Tribunal of the underlying claims of the Applicant.

The Applicant had complained that the DRE process generally lacked many of the attributes of a formal legal proceeding, in particular, no written records of proceedings, which she contended had not resulted in a meaningful review of the DRE team’s investigation of her claims. The Respondent, on the other hand, had argued that the DRE process had been designed for the benefit of staff to expedite the remedying of past discrimination, free from the constraints of formal adversary proceedings.

In considering the matter, the Tribunal examined the issue of whether it was within the Fund’s discretionary authority to fashion such an alternative dispute resolution mechanism to serve the needs of the Fund and its staff. The Tribunal looked to article III of its Statute, which instructed the Tribunal to “apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts”. Furthermore, the Tribunal noted that the commentary to the Statute suggested that a high degree of deference is to be accorded to the Fund’s policymaking. The Tribunal also recalled World Bank Administrative Tribunal decision No. 1 (1981), *de Merode*, in which was elaborated

a standard for reviewing the exercise of the authority of an international organization to make changes to the terms or conditions of employment:

“The Bank would abuse its discretion if it were to adopt such changes for reasons alien to the proper functioning of the organization and to its duty to ensure that it has a staff possessing ‘the highest standards of efficiency and of technical competence’. Changes must be based on a proper consideration of relevant facts. They must be reasonably related to the objective which they are intended to achieve. They must be made in good faith and must not be prompted by improper motives. They must not discriminate in an unjustifiable manner between individuals or groups within the staff. Amendments must be made in a reasonable manner seeking to avoid excessive and unnecessary harm to the staff. In this respect, the care with which a reform has been studied and the conditions attached to a change are to be taken into account by the Tribunal.”

Having examined all of the above, the Tribunal concluded that the record supported the conclusion that DRE was a good-faith effort on the part of the Fund, perhaps unprecedented among international organizations, to resolve lingering allegations of past discrimination and to remedy the adverse effects of discrimination on the careers of aggrieved staff members. The Tribunal noted that, according to the Fund, approximately 70 staff members availed themselves of these procedures, with half of these individuals receiving some form of relief.

While the Respondent’s decision to afford alternative review procedures to aggrieved staff members (including those whose legal rights may have expired) was entitled to a high degree of deference on review, the conduct of the alternative dispute resolution mechanism as applied in individual cases was itself subject to review for abuse of discretion. In this regard, the Tribunal recalled a relevant portion of the commentary to the Tribunal’s Statute:

“... with respect to review of individual decisions involving the exercise of managerial discretion, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures.”

The Tribunal further recalled that the World Bank Administrative Tribunal had stressed that the applicant carried the burden of proof in such cases (*Iona Sebastian (No. 2) v. IBRD*, World Bank Administrative Tribunal decision No. 57 (1988)), and, as the Tribunal observed in an earlier judgement, in reviewing a decision for abuse of discretion, “[i]nternational administrative tribunals have emphasized the importance of observance by an organization of its procedural rules. ...” (*Mr. M. D’Aoust, Applicant v. International Monetary Fund, Respondent*, International Monetary Fund Administrative Tribunal Judgement No. 1996-1 (2 April 1996).)

In examining whether or not there had been an abuse of discretion in the Applicant's individual case, the Tribunal concluded that the essential steps for the DRE review, as set forth in the memorandums to staff of 28 August 1996 and 13 January 1997, which contained the procedures under which DRE would operate, were taken in the Applicant's case, as corroborated by the review team's confidential case report.

The Tribunal also addressed several errors made by the DRE team in examining her claims, as alleged by the Applicant. Regarding the claim that the team had failed to interview approximately two thirds of the witnesses she had suggested, the Tribunal noted the record, including the testimony of the senior Administration Department official who described the rationale for the review team's selection of persons to interview in Ms. "Y"'s case, as well as comparing the selection of witnesses in Ms. "Y"'s case with the examination of other cases under DRE. The Tribunal concluded that the procedures applied to Ms. "Y"'s case were consistent with the procedures set for DRE and with those applied by the DRE team in other cases.

The Tribunal further considered whether the conclusions of the DRE team were reasonably supported by the evidence, and not arbitrary or capricious. For example, a decision may be set aside if it rested on an error of fact or of law, or if some essential fact had been overlooked, or if clearly mistaken conclusions had been drawn from the evidence (*In re Durand-Smet (No. 4)*, International Labour Organization Administrative Tribunal Judgement No. 2040 (2000)).

Moreover, the Tribunal noted that its review was limited by the rule that it could not substitute its judgement for that of the competent organ. The Tribunal further noted that the degree of its review was necessarily dictated by the nature of the process being reviewed. In the present case, as observed by the Tribunal, the review was governed not only by its deference to those decision makers competent to take the decision, but also by the fact that the applicable procedures were quite informal and did not provide for any contemporaneous record of proceedings. Therefore, the measure of the review undertaken by the Tribunal in considering the fairness of the DRE process as applied in the case of Ms. "Y" was clearly distinguishable from the type of review that would be entertained, for example, by an appellate court reviewing trial court proceedings for error. Nonetheless, after consideration of all the evidence in the case, the Tribunal concluded that the conclusions of the DRE team (and their ratification by the Director of Administration) were reasonably supported by the evidence adduced in their investigation of Ms. "Y"'s claims.

Based on the above, the Tribunal unanimously decided that the application of Ms. "Y" should be denied.

¹ In view of the large number of judgements that were rendered in 2002 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 Tribunals, namely, judgements Nos. 1042 to 1079 of the United Nations Administrative Tribunal; judgements Nos. 2119 to 2149 of the Administrative Tribunal of the International Labour Organization; decisions Nos. 260 to 291 of the World Bank Administrative Tribunal; and judgements Nos. 2002-1 to 2002-3 of the Administrative Tribunal of the International Monetary Fund, see, respectively, documents AT/DEC/1042 to AT/DEC/1079; *Judgements of the Administrative Tribunal of the International Labour Organization: 93rd Ordinary Session; World Bank Administrative Tribunal Reports, 2002; and Administrative Tribunal of the International Monetary Fund, Judgement Nos. 2002-1 to 2002-3*.

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/her employment has ceased, and to any person who has succeeded to the staff member's rights on his/her death; and (b) to any other person who can show that he/she 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 those applications from staff members of the International Tribunal for the Law of the Sea and the International Seabed Authority.

³ Mayer Gabay, President; Kevin Haugh, Vice-President; and Omer Yousif Bireedo, Member.

⁴ Mayer Gabay, President; and Omer Yousif Bireedo and Brigitte Stern, Members.

⁵ Mayer Gabay, President; and Marsha A. Echols and Omer Yousif Bireedo, Members.

⁶ Mayer Gabay, President; and Marsha A. Echols and Brigitte Stern, Members.

⁷ Julio Barboza, Vice-President; and Marsha A. Echols and Spyridon Flogaitis, Members.

⁸ *Ibid.*

⁹ 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: International Labour Organization, including the International Training Centre; World Health Organization, including the Pan American Health Organization; United Nations Educational, Scientific and Cultural Organization; International Telecommunication Union; World Meteorological Organization; Food and Agriculture Organization of the United Na-

tions, including the World Food Programme; European Organization for Nuclear Research; World Trade Organization; International Atomic Energy Agency; World Intellectual Property Organization; European Organization for the Safety of Air Navigation (Eurocontrol); Universal Postal Union; European Southern Observatory; Intergovernmental Council of Copper Exporting Countries; European Free Trade Association; Inter-Parliamentary Union; European Molecular Biology Laboratory; World Tourism Organization; European Patent Organisation; African Training and Research Centre in Administration for Development; Intergovernmental Organisation for International Carriage by Rail; International Center for the Registration of Serials; International Office of Epizootics; United Nations Industrial Development Organization; International Criminal Police Organization (Interpol); International Fund for Agricultural Development; International Union for the Protection of New Varieties of Plants; Customs Cooperation Council; Court of Justice of the European Free Trade Association; Surveillance Authority of the European Free Trade Association; International Service for National Agricultural Research; International Organization for Migration; International Centre for Genetic Engineering and Biotechnology; Organisation for the Prohibition of Chemical Weapons; International Hydrographic Organization; Energy Charter Conference; International Federation of Red Cross and Red Crescent Societies; Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization; European and Mediterranean Plant Protection Organization; International Plant Genetic Resources Institute; International Institute for Democracy and Electoral Assistance; International Criminal Court; International Olive Oil Council; Advisory Centre on WTO Law; and African, Caribbean and Pacific Group of States. 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.

¹⁰ Michel Gentot, President; and James K. Hugessen and Flerida Ruth P. Romero, judges.

¹¹ Michel Gentot, President; and Seydou Ba and James K. Hugessen, judges.

¹² Michel Gentot, President; and Jean-François Egli and Hildegard Rondon de Sanso, judges.

¹³ Michel Gentot, President; and Seydou Ba and James K. Hugessen, judges.

¹⁴ Michel Gentot, President; and James K. Hugessen and Flerida Ruth P. Romero, judges.

¹⁵ Michel Gentot, President; and Seydou Ba and James K. Hugessen, judges.

¹⁶ The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as “the Bank Group”). The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reasons of the staff member’s death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

¹⁷ Thio Su Mien, a Vice-President as President; Bola A. Ajibola, a Vice-President; and Elizabeth Evatt and Jan Paulsson, judges

¹⁸ Thio Su Mien and Bola A. Ajibola, Vice-Presidents; and A. Kamal Abul-Magd, Robert A. Gorman, Elizabeth Evatt and Jan Paulsson, judges.

¹⁹ 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.

²⁰ Stephen M. Schwebel, President; and Nisuke Ando and Michel Gentot, associate judges.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations (Issued or prepared by the Office of Legal Affairs)

COMMERCIAL ISSUES

1. OPERATIONS OF THE UNITED NATIONS POSTAL ADMINISTRATION— UNITED NATIONS POSTAL AGREEMENTS

Memorandum to the Under-Secretary-General of the Office of Internal Oversight Services

Postal administration

1. This is with reference to your memorandum dated 23 October 2002, requesting our advice in connection with the ongoing discussions and analysis of alternative strategies for the United Nations Postal Administration (UNPA) business. Following receipt of your request, my Office also had informal discussions with the Office of Central Support Services and UNPA, which have been taken into account for the preparation of this advice.

2. You informed us that a number of ideas are being considered for enhancing the profitability of UNPA, as well as the option of discontinuing the UNPA service entirely. You state that your discussions and analysis require an understanding as to the possible extent of the legal obligations on the part of the United Nations for United Nations stamps that have been sold if the Organization were to discontinue UNPA operations, i.e. the extent of our possible liability for unmailed stamps. As discussed below, in our view, the Organization would remain liable for the costs associated with any actual usage of such stamps, at least for a period of time following the decision to terminate the operations.

Analysis

3. As you know, UNPA operations are governed by the terms of the Postal Agreements entered into by the United Nations with the Governments of the United States of America (1951), Switzerland (1968) and Aus-

tria (1979). All three Agreements contain provisions dealing, respectively, with the sale of United Nations stamps for the franking of mail and stamps sold by the United Nations for philatelic purposes. All three Agreements provide that the postal stations at the United Nations premises in question shall only sell United Nations stamps, that the United Nations shall provide such stamps to the postal stations free of charge, and that the proceeds of the sales of the stamps are to be retained by the postal authority concerned. In respect of the United Nations stamps sold by the United Nations for philatelic purposes, all three Agreements provide that the United Nations shall retain all revenue derived from such sale. However, the Agreement with the United States of America also provides that, if any stamps sold by the United Nations for philatelic purposes are used as postage on mail, the United Nations must pay the United States of America postal authority the amount equal to the face value of any such stamp so used as postage. Similar provisions exist in the Agreements with Switzerland and Austria.

4. We understand that UNPA has never issued any General Conditions, which would bear on the scope of the liability of the United Nations for unmailed stamps in the event of discontinuation. Also, our preliminary research into the agreements concluded under the auspices of the Universal Postal Union (UPU) setting out the rules applicable to the international postal service failed to reveal any specific rule that would bear on this issue. However, there are situations that have arisen that may provide some guidance, such as in connection with a transition from one currency to another (e.g. 12 countries that have accepted the euro as their common currency) or the cessation of a State (e.g. the German Democratic Republic). The stamps issued by the national postal administrations with national currency denomination became invalid in light of the adoption of the euro as the new common currency. Similarly, in the case of the German Democratic Republic, the stamps previously issued by its former authorities became invalid in light of the reunification with the Federal Republic of Germany. To address these situations, the (national) postal administrations provided for a grace period during which the old stamps would still be recognized in conjunction with the provision of an exchange programme under which the old stamps could be exchanged against new ones. We note that the grace periods offered by the respective national postal administrations differ from country to country.

5. While we note that the reasons for discontinuing the issuance of national stamps and the transitional problems to be addressed by national postal administrations differ from the current situation relating to UNPA, the above examples reflect a general principle that the issuing entity would be entitled to terminate the validity of stamps previously issued, but that the buyer of stamps could also reasonably expect that a purchased stamp can be used for the franking of mail for some period following such termination. In other words, while there would be an obligation on the part of the United Nations to continue to accept responsibility for unmailed

United Nations stamps for a certain period, the Organization would also be entitled to terminate the obligation at the end of that period.

6. In the apparent absence of any specific international rules applicable to the possible scenario addressed in your memorandum, we believe that the standards for the activities of UNPA would need to be determined in accordance with the existing arrangements relating thereto, i.e. the Agreements with the Governments of the United States of America, Switzerland and Austria referred to above. We note that all three Agreements may be terminated by the United Nations by giving written notice “at least twelve (12) months in advance” (see section 8 (iii) of the 1951 Agreement with the United States of America; article 8 (2) of the 1969 Agreement with Switzerland; and article 7 (2) of the 1979 Agreement with Austria). In conjunction with such notice, the United Nations should make it known that all United Nations stamps will become invalid, i.e. could not be used for mailing purposes, following the expiration of the notice period.

7. Provided that there is adequate notice, we believe that the 12 months would be sufficient in order to inform each collector, holder or purchaser of United Nations stamps of the fact that the United Nations would discontinue to issue stamps and to recognize them for the purposes of franking of mail and would, therefore, meet the above-described buyer’s reasonable expectation. We are further of the view that the 12 months’ notice period would be consistent with the grace period applied by national postal administrations in the cases referred to in paragraph 4 above.

8. As stated in paragraph 3 above, the Postal Agreement with the United States of America provides that, if any stamps issued for philatelic purposes are used as postage on mail, the United Nations shall pay the United States postal authority the amount of the face value of any such stamp so used. Accordingly, if the Organization were to pursue the approach suggested in paragraphs 6 and 7 above and owners, collectors or other holders of United Nations stamps were to decide to use unmailed stamps for mailing purposes, the Organization would have to pay the postal administrations the value of such stamps so used during the 12 months. Since we have no information on how owners, collectors or other holders of United Nations stamps would react to a decision to terminate the validity of United Nations stamps, we are not in a position to assess this risk.

9. Of course, the proposed termination would require cooperation from the three national postal authorities concerned, in particular, in respect of the arrangements necessary for the 12 months’ transitional period following the termination of the three Agreements and concerning the “phasing out” of the services and obligations set out therein. Please let us know if you require our assistance in addressing these arrangements.

10. Finally, as you know, by resolution 454 (V), the General Assembly “requested the Secretary-General to ... [proceed with the] necessary arrangements for the establishment of a United Nations postal administra-

tion". It would therefore appear desirable, if not also required, to notify the General Assembly in advance of any decision to terminate such arrangements.

12 December 2002

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2. USE OF THE UNITED NATIONS LOGO AND NAMES OF STAFF MEMBERS ON THE INTERNET SITE LOCATED AT [HTTP://INTERSYNDICALE.ORG](http://intersyndicale.org)

*Memorandum to the Senior Legal Officer, Office of
the Director-General, United Nations Office at Geneva*

1. This responds to your recent enquiries to the Legal Counsel regarding the above-referenced matter.

2. Based on the information you have provided, our review of the history of this matter, and our review of various information from the Internet, we understand that, pursuant to a decision of the staff associations of the United Nations and the United Nations Office at Geneva (UNOG), an entity was established known as: "Force Intersyndicale". That entity is supposed to be a forum for cooperation between the two staff associations. In addition to the establishment of such entity, a site on the World Wide Web has been established at <<<http://intersyndicale.org>>>. A record-check revealed that the website for "Intersyndicale" is registered to the "Conseil de Coordination" at the Palais des Nations, Geneva (i.e. the Staff Coordinating Council), i.e. the UNOG staff association. The administrative contact for the registrant is also listed in the records of Network Solutions as "Conseil de Coordination" with an e-mail address listed as "bsecret@unog.ch", which used the name "UNOG". However, it is not clear to us that this is an official UNOG e-mail listing.

3. The website for "Intersyndicale.org" states that "Force Intersyndicale" is headed by ("*conduit par*") A, who, we understand, is a staff member of the UNOG Division of Conference Services, Interpretation Service. The website also refers to an entity called the "New Wood Syndicate", which is said to be headed by B, who, we understand, is a staff member of the UNOG Division of Administrative Support Services, Purchase and Transportation Service. We understand that A and B were formerly elected representatives of the UNOG Staff Coordinating Council but that, since last fall, they are no longer duly elected representatives. Thus, they may no longer hold themselves out as being authorized representatives of the staff of the Organization.

4. In both your recent and earlier correspondence regarding this matter, you requested advice as to how the Administration at UNOG should deal with this matter. You noted that UNOG was not aware that any authorization had been given by the Secretary-General (or anyone else at Headquarters) to the person(s) or entity involved with the website or with “Force Intersyndicale” to use the logo and name of the United Nations on the Internet or for any other purpose. In your recent enquiry, you also mentioned that the website for this entity has posted various communiqués on the website that allegedly are critical of the Organization and its staff members and that one or more of such communiqués conveys allegedly defamatory information regarding specific staff members. In this regard, you attached a memorandum of 14 January 2002 from the Executive Secretary of the Conseil de Coordination, or Coordinating Council, of the New York and Geneva Staff Councils, protesting such alleged defamation. Insofar as the Executive Secretary is complaining about the communiqués posted on the “Intersyndicale” website, it appears that the Conseil de Coordination does not continue to sponsor or condone the operation of the “Intersyndicale” website in its present form by A and B, who are no longer the elected representatives of the staff.

5. The right of the staff to form associations and to engage in staff-management consultations is governed exclusively by chapter VIII of the Staff Regulations and Rules. Under the Staff Regulations and Rules, all staff members may participate in the election of staff councils and other corresponding staff representative bodies established in accordance with the Staff Regulations. As we have observed in our prior opinions in 1973¹ and 1978,² the Administration may only deal with the authorized representatives of the staff duly elected in accordance with the Staff Regulations and Rules, as such representatives are the *exclusive* authorized representatives of the staff.

6. In our 1978 opinion, we reiterated the exclusivity of the Staff Regulations and Rules governing the collective bargaining process within the Organization. We further remarked that staff members nonetheless enjoyed rights of association with entities not necessarily recognized as authorized representatives of the staff under the Staff Regulations and Rules and that, accordingly:

“Staff members are free to join with other staff members, and even with persons not affiliated with the United Nations in any association that is compatible with their status as international civil servants, that is which does not entail public espousal of political positions or inappropriate activities within or outside the United Nations. Staff members’ freedom of association has been considered to encompass the right to organize a union of staff members other than the recognized staff association; but this freedom of association enjoyed by staff members is separate and distinct from rights accorded to a particular association that staff members may join. While there is no absolute

impediment to the administration's voluntarily having contact with representatives of any groups or associations to which staff members belong, the United Nations administration must respect the exclusive status and functions of the representatives recognized pursuant to chapter 8 of the Staff Regulations and Rules."³

7. In 1998, this Office was advised by the Office of Human Resources Management that an entity referred to as the "New Wood Staff Association" had sought to form part of the UNOG Staff Coordinating Council. We responded by reiterating the principles set forth in the two above-referenced legal opinions, namely that the Organization was obligated to deal only with, and to make facilities available only to, the authorized representatives of the staff as chosen in accordance with the Staff Regulations and Rules. We noted that, while staff members were entitled to affiliate with any other entity, including the New Wood Staff Association, their activities with such entities must be consistent with their obligations and status as international civil servants. We note that B had, at that time, represented himself as being affiliated with the New Wood Association and as a "*membre du Conseil de coordination du personnel des Nations Unies*". As noted in paragraph 3 above, B now holds himself out as the head of the "New Wood Syndicate" which is said to be part of the "Force Intersyndicale".

8. In addition to our prior opinions regarding this matter, we note that the Staff Regulations, Rules and relevant administrative issuances clearly define the obligations of the Organization in dealing with staff representatives and the facilities to be accorded by the Organization to such authorized representatives. In particular, staff rule 108.1 (e) provides: "In accordance with the principle of freedom of association, staff members may form and join associations, unions or other groupings. However, formal contact and communication on the matters [subject to staff-management consultation] shall be conducted at each duty station through the executive committee of the staff representative body, which shall be the sole and exclusive representative body for such purpose". In addition, paragraph 3 of administrative instruction ST/AI/293 of 15 July 1982 entitled "Facilities to be provided to staff representatives" provides: "Staff representatives as well as staff representative bodies shall be afforded such facilities as may be required to enable them to carry out their functions promptly and efficiently, while not impairing the efficient operation of the Organization. The precise nature and scope of the facilities to be provided at each duty station shall be determined in accordance with the procedures set out in chapter VIII of the Staff Rules".

9. In this case, the entity referred to as "Force Intersyndicale" appears to be holding itself out as a "joint cooperation and liaison platform" of the New York and Geneva Staff Councils that will be known as "Coopération Intersyndicale". While such a representation may indeed have been the case when A and B were duly elected staff representatives,

it is not clear that such representation continues to reflect the status of the entity. This is particularly the case insofar as the Executive Secretary now disavows the entity. This Office is not in a position to ascertain whether “Force Intersyndicale” continues to be recognized by either or both the New York and Geneva staff associations as an entity sponsored or controlled by them. Your Office may wish to consult with the Office of Human Resources Management and with the authorized staff representatives of the New York and Geneva staff associations in order to make such a determination.

10. On the basis of chapter VIII of the Staff Rules and the above-cited ST/AI/293, the Organization would not have any basis for providing facilities, including the use of the United Nations name and logo or the use of the Organization’s Internet facilities, to “Force Intersyndicale” or any other entity affiliated therewith, unless such entities are part of the recognized staff associations in either or both New York and Geneva. Accordingly, if you determine that “Force Intersyndicale” is not, in fact, currently recognized as an entity sponsored or controlled by the recognized staff associations in either or both New York and Geneva, then we would recommend that their sponsors (i.e. A and B) be informed that they are not authorized to hold themselves out as authorized representatives of the staff, to use the name and logo of the United Nations in connection with their activities, and to use facilities of the Organization for their activities.

11. For this purpose, we have prepared the enclosed draft notice of cease and desist. In particular, that notice of cease and desist requests the recipient to refrain from using the name and the emblem of the Organization in connection with Force Intersyndicale or any affiliated entity or on any website. Insofar as the website is registered to facilities at the Palais des Nations, the draft notice also requests that such registration and any e-mail facilities of UNOG be removed from the website and from any registration thereof.

12. Your enquiries also raise the question of how to deal with alleged instances of defamation appearing on the website for “Force Intersyndicale”. As noted above, staff members are free to associate with and even establish associations other than the recognized staff associations. In exercising such right of association, however, staff members must conform to their obligations as international civil servants. Certainly, defaming other staff members, if proven, would not be consistent with such obligations. In accordance with paragraph 2 of administrative instruction ST/AI/371 of 2 August 1991, concerning disciplinary measures and procedures, the head of office of the staff member accused of misconduct should conduct a preliminary investigation of any alleged misconduct, such as the alleged defamation, in order to determine whether such allegations of misconduct are well founded. If the head of office finds such allegations of misconduct are well founded, the matter should be referred to the Assistant Secretary-General for appropriate disciplinary action in accordance with chapter X

of the Staff Rules. Accordingly, we would recommend that the head of administration at UNOG should conduct a preliminary investigation into the alleged defamation in accordance with ST/AI/371 and, based on the results of any such investigation, should take any action specified in that administrative instruction and chapter X of the Staff Rules.

14 February 2002

FINANCIAL ISSUES

3. QUESTION OF WHETHER CLAUSES PROVIDING FOR THE RETURN TO DONORS OF ALL THE INTERESTS ACCRUED FROM THEIR CONTRIBUTIONS ARE COMPATIBLE WITH UNITED NATIONS REGULATIONS, RULES AND POLICIES

*Memorandum to the Director of the Internal Audit Division,
Office of Internal Oversight Services*

1. I refer to your memorandum of 28 January 2001, in which you requested our advice on whether the clauses incorporated in certain agreements between donors and the United Nations, providing for the return to the donor of all interests accrued from its contribution, are compatible with United Nations Financial Regulations, Rules and policies. You attached to your memorandum excerpts of section F of the audit report on the management of Headquarters trust funds, in which the auditors, noting that two agreements with the United States Agency for International Development (USAID)⁴ provided for the return to USAID of all interests accrued from its contribution, concluded that such provisions were incompatible with United Nations financial regulations 9.1 and 9.3 and financial rules 109.1 and 109.4 (b). You also attached to your memorandum the Controller's response on the matter, which reads as follows:

“As concerns the interest earned on a donor's contribution, this is in effect in addition to the amount provided for by the donor for a specific activity. Accordingly, its disposition by returning the interest or a pro-rated share to the donor (normally at the closure of the trust fund or at the expiration/completion of the project or activity) is not in contravention of the rule.”

The delay in our response is regretted. Please find below our comments.

Relevant provisions of the Financial Regulations and Rules

2. Financial regulations 9.1 and 9.2 provide that the Secretary-General may make short-term or long-term investments of monies standing

to the credit of trust funds, reserves or special accounts. Financial regulation 9.3 provides that “*Income derived from investments shall be credited as provided in the rules relating to each fund or account*”. Financial rule 109.4 (b) provides that “*Income from investments of trust funds and special accounts shall include amounts from investments, royalties and other income derived from or accruing to such funds and shall be credited to the trust fund or special account concerned*”.

United Nations practice

3. In most cases, donors do not require the return of all interest accrued on their contributions. In those cases the relevant agreements with the donors either are silent on the disposition of interest, or provide that any interest shall, in consultation or agreement with the donor, be used for purposes consistent with the terms of reference of the trust fund. Such agreements also typically provide that after the trust fund is closed or the project or activity funded from the contribution is completed or terminated, any surplus remaining in the trust fund (including any remaining interest income) shall, after all expenditures and liability incurred by the United Nations have been met, be either returned to the donor or otherwise disposed of in consultation or agreement with the donor.

4. In a few cases, donors request as a condition to making their contributions that all interest be returned to them, unencumbered, and the United Nations has agreed, in the case of USAID after arduous negotiations in which the Office of the Controller and this Office were involved, to provisions being made correspondingly in the relevant agreements. We understand that it is in respect of such provisions that you are seeking our advice.

Analysis and advice

5. It is our opinion that the practice referred to in paragraph 4 above, whereby the United Nations returns to a donor the interest accrued from the donor’s contribution when this was a condition of the donor’s offer incorporated in the relevant agreement between the donor and the United Nations, is not incompatible with the Financial Regulations and Rules cited in your memorandum. The reasons for our opinion are explained below.

6. From the outset, we will point out that financial rule 109.4 (b) merely specifies where interest derived from the investment of trust funds is to be credited, and does not regulate how such interest should be used or disposed of. We understand that all such interest is in practice credited to the relevant trust fund, irrespective of whether the interest is ultimately returned to the donor or not.

7. It is our understanding that, when a contribution is made for a specific project or activity within the terms of reference of a trust fund, its principal amount is expected to cover the costs to the United Nations of the project or activity concerned (including actual costs, support costs

incurred by the United Nations and, where relevant, appendix D contribution). The administrative issuances governing the establishment and administration of trust funds provide for several measures to address possible shortfalls in funding:

(a) The establishment of an operational cash reserve to cover shortfalls (ST/AI/285, section IV.B);

(b) The provision in trust fund agreements that: (i) in case of unforeseen expenditures, a supplementary budget showing the further necessary financing shall be submitted to the donor and, if such further financing is not available, the activity shall be reduced or terminated; (ii) the United Nations will in no event assume any liability in excess of funds provided in the trust fund (ST/AI/285, annex, article 111 (3)).

After the trust fund is closed, or the project or activity for which it has been established is completed or terminated and all expenditures thereunder are met, any remaining balance (including any remaining interest) is disposed of as agreed with the donor, which may include using the balance, in consultation with the donor, for purposes consistent with those of the trust fund, or returning the balance to the donor (see ST/AI/285, annex, article X).

8. On the other hand, interest that might accrue from such a contribution is not a priority taken into account in establishing the budget for the project or activity concerned. Thus, any such interest, if and when accrued, is in effect in addition to the amounts budgeted for the project or activity and which the donor has agreed to fund. While some donors, when pledging their contribution, do not put any conditions to the use of interest that may accrue therefrom, others require either that the interest be used by the United Nations in consultation or agreement with them or, as in the case of USAID, that the interest be returned to them. There is, in our view, no clear prohibition by the Financial Regulations and Rules to the United Nations agreeing to any of the above conditions regarding the use or disposition of interest when they are part of the terms of the offer made by the donor.

20 February 2002

4. REPORT TO THE GENERAL ASSEMBLY ON MULTI-YEAR PAYMENT PLAN—
GENERAL ASSEMBLY RESOLUTION 56/243—APPLICATION OF ARTICLE 19 OF
THE CHARTER OF THE UNITED NATIONS

*Memorandum to the Chief of Contributions Service,
Department of Management*

1. This is in response to your memorandum of 25 February 2001 in which you refer to paragraph 3 of General Assembly resolution 56/243 of 24 December 2001, wherein the Assembly requested the Secretary-General to propose guidelines for multi-year payment plans through the

Committee on Contributions, and point out that the guidelines must address the issue of whether adoption of such plans could be linked to the application of Article 19 of the Charter of the United Nations.

Introduction

2. It is noted in the memorandum that, when the Committee on Contributions discussed this matter at its sixtieth session, some of its members questioned the legality of such a link and expressed the view that this would require a revision of the Charter.

3. Your assumption is that the linkage between adoption of a payment plan and permitting a Member State subject to Article 19 of the Charter to vote is acceptable, if the decision of the General Assembly is based on the failure of the Member State concerned to pay immediately being beyond its control. You further comment that a decision providing that payment plans may be linked in this way to the application of Article 19 of the Charter would not preclude the General Assembly from permitting a Member State to vote under Article 19 without the adoption of such a plan.

4. Our views in response to your enquiry as to whether the adoption of multi-year payment plans may be linked to the application of Article 19 of the Charter are the following.

Analysis of the relevant provisions of the Charter of the United Nations

5. In accordance with paragraphs 1 and 2 of Article 17 of the Charter, the General Assembly is entrusted with the authority to approve the budget of the United Nations and the expenses of the Organization shall be borne by its Members as apportioned by the General Assembly. Regulations 4.1 and 5.1 of the Financial Regulations and Rules of the United Nations, approved by the General Assembly in furtherance of the above provision of the Charter, provide that the appropriations voted by the General Assembly shall be financed by contributions from Member States, according to the scale of assessments determined by the General Assembly.

6. The Charter, thus, in unequivocal terms states that each Member of the Organization has an obligation to pay its contribution to the budget of the Organization as assessed by the General Assembly. As noted above, this commitment of Member States under the Charter in respect of their contributions to the budget of the Organization is confirmed and further elaborated in the Financial Regulations and Rules of the United Nations.

7. Article 19 of the Charter should, therefore, be viewed in the light of what is stated in paragraph 2 of Article 17 regarding the obligation of each Member State to bear its portion of the expenses of the Organization. Article 19 of the Charter states that:

“A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.”

By declaring that a Member State that fails to meet the obligation stipulated in paragraph 2 of Article 17 can no longer exercise its voting rights in the General Assembly, Article 19 reaffirms the importance attached under the Charter to strict observance by Member States of the obligation to pay their assessed contributions to the budget of the Organization. The importance of this obligation is also demonstrated by the fact that, as was noted in a letter of the Secretary-General, circulated during the twenty-second session of the General Assembly, the express language of the first sentence of Article 19 does not call for a decision of the General Assembly prior to deprivation of vote (circulated as document A/7146, mimeographed).

8. The second sentence of Article 19 addresses an exceptional situation which may arise when a Member State is unable to pay its assessed contributions to the United Nations budget because of conditions which are beyond its control. This sentence stipulates that the General Assembly *may* (emphasis added) under these circumstances allow the State concerned to continue to vote in the Assembly.

9. Under Article 4 of the Charter, membership in the United Nations is open to States which accept the obligations contained in the Charter and, in the judgement of the Organization, are able to carry out these obligations. Consequently, unless the circumstances referred to in the second sentence of Article 19 exist, Member States cannot claim that they are not in a position to pay their assessed contributions to the budget of the Organization. It appears that Articles 17 and 19 of the Charter were drafted on the assumption that periods during which Member States may be unable to pay their contributions due to conditions beyond their control would be relatively short-lived and that there would never be a situation whereby some Member States may find themselves being unable to pay the assessed contributions because of a huge debt accumulated by them under extraneous circumstances. It is worthy of note that according to the *Repertory of Practice of the United Nations*, in the first twenty-five years of the United Nations, the provisions of Article 19 concerning suspension of voting rights were not frequently invoked.

Summary of the position taken by the Committee on Contributions on multi-year payment plans

10. In its report to the fifty-fifth session of the General Assembly, the Committee on Contributions noted that a number of Member States

were faced by large and persistent arrears in the payment of their contributions to the United Nations and concluded that it was unlikely that they would be in a position to eliminate their arrears immediately. The Committee agreed that multi-year payment plans could be a useful tool in reducing arrears to the Organization in the case of those Member States that sought a rescheduling of the payment of their arrears. While the Committee noted that some other organizations had adopted decisions establishing a link between payment plans and the suspension of penalties for non-payment of assessed contributions, members of the Committee were divided on whether there should be a link between payment plans and the application of Article 19 (A/55/11, paras. 11-15).

Practice of the organizations of the United Nations system

11. The addendum to the report of the Committee on Contributions circulated at the fifty-sixth session of the General Assembly (A/56/11/Add.1) contains extensive information on arrangements made by various organizations of the United Nations system with regard to payment plans for the settlement of arrears of assessed contributions. These arrangements, of course, cannot have a direct bearing on how the question of establishment of linkage between adoption of payment plans and the application of Article 19 of the Charter should be resolved within the United Nations. The answer to this question depends on the interpretation of the relevant provisions of the Charter. However, the fact that governing organs of many of these organizations, which have in their constituent instruments provisions similar to Article 19 of the Charter, have adopted arrangements providing that permission to vote is conditional upon a Member State's observance of the recommendations for settlement of arrears approved by those organs, is symptomatic of a developing practice. It is also worthy of note that adoption of these arrangements did not raise the question of their inconsistency with the relevant provisions of the constituent instruments of the organizations concerned.

Conclusions

12. It follows from the text of the second sentence of Article 19 that, in order for the General Assembly to permit a Member State in arrears to continue to vote in the Assembly, it must be satisfied that the failure to pay is due to conditions beyond the control of the State concerned. The Assembly, therefore, should first be convinced that that State has made and will continue to make every effort to meet its obligation to pay the assessed contributions. Consequently, it would be quite appropriate for the General Assembly to decide that States that seek the suspension in their cases of penalties for non-payment of assessed contributions should demonstrate their commitment to eliminate their arrears by submitting in consultation with the Secretariat to the Assembly for

its approval multi-year payment plans. The introduction of this requirement will not, in our view, be inconsistent with Article 19 of the Charter because its purpose would be to facilitate the implementation by the Assembly of its responsibilities under that Article, namely, to assist the Assembly in deciding whether the State concerned is striving to meet its financial obligations under the Charter and non-payment is really due to conditions beyond its control.

13. We believe that the above conclusion is consonant with the position taken implicitly on this issue by the General Assembly in resolution 56/243 of 24 December 2001. In that resolution, which was adopted in connection with the aforementioned report of the Committee on Contributions, the Assembly recognized that multi-year payment plans, subject to careful formulation, could be helpful in allowing Member States to demonstrate their commitment under Article 19 of the Charter to pay their arrears, thereby facilitating consideration of applications for exemption by the Committee on Contributions.

6 March 2002

5. FINANCIAL RESPONSIBILITY OF STAFF MEMBER (STAFF RULES 112.3, 212.2 AND 312.2 AND FINANCIAL RULES 110.14 AND 114.1)

*Memorandum to the Assistant Secretary-General for
Human Resources Management*

1. I refer to your memorandums of 2 May 2002 and 10 June 2002 in which you requested comments regarding (a) the relationship between staff rules 112.3, 212.2 and 312.2 and financial rules 110.14 and 114.1; and (b) the possible legal implications of taking action against a staff member solely on the basis of the latter. Attached to your 10 June memorandum is the Controller's 21 May 2002 memorandum to the Joint Appeals Board Panel, which sets out the delegation of authority and existing procedures currently applicable under the financial rules at issue. Those procedures are essentially as follows. An investigation is initiated either by the relevant office or by the Office of Internal Oversight Services and a report is subsequently issued. Based on the comments contained in this report, the Controller would be approached for advice on the appropriate action to be taken under the United Nations Financial Regulations and Rules. At the same time, the staff member to whom responsibility is attached would be advised of the content of this report and given an opportunity to respond. On the basis of the above alone, the Organization would initiate a recovery action against the staff member.

2. For the reasons set forth below, I consider that the application of a simple negligence rather than a gross negligence standard, and the failure to provide an affected staff member the opportunity for a review by a duly constituted advisory body before withholding action is taken,

could, unless justified by clear and convincing policy considerations, expose the Organization to successful challenges before the United Nations Administrative Tribunal. In order to avoid such challenges and to better ensure that staff members are accorded appropriate due process in regard to these matters, I recommend regarding any decision to withhold funds that consideration be given to: (i) applying these rules on the basis of a finding of gross negligence (or wilful violation of the Organization's rules), and (ii) providing an opportunity before implementing any such decision for a review by a duly constituted advisory body; except possibly in regard to particular categories of staff members or particular categories of cases where clear and convincing policy and practical considerations justify a different treatment (cf. paras. 11 and 14 below).

Background

3. Staff rule 112.3⁵ provides as follows:

“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.”

Financial rules 110.14 and 114.1 provide, respectively, as follows:

“Writing-off of losses of cash and receivables

“(a) The Controller may, after full investigation, authorize the writing-off of losses of cash and the book value of accounts receivable and notes receivable deemed to be irrevocable, except that the writing-off of amounts in excess of \$10,000 shall require the approval of the Secretary-General.

“(b) The investigation shall, in each case, fix the responsibility, if any, attaching to any official of the United Nations for the loss. Such official may be required to reimburse the loss either partially or in full.”

“Personal responsibility

“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 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 consequences of such action.”

4. Whereas both the aforementioned staff and financial rules impose financial liability in connection with staff members' actions, the Secretary-General's report entitled "Follow-up report on management irregularities causing financial losses to the Organization" (A/54/793), to which you referred in your 2 May 2002 memorandum, concentrated on and outlined "the procedures which the Secretary-General [was] developing for determining gross negligence for the effective implementation of staff rule 112.3 for financial recovery" (ibid., summary). Paragraph 8 of the report stated as follows:

"The Secretary-General is of the view that the statutory basis for imposing financial liability for gross negligence is staff rule 112.3. While there are other rules (such as financial rules 114.1 and 110.14) on the basis of which financial recovery may be made from staff members, a finding of gross negligence is not necessarily required under them. Given that the emphasis of the present report should be on financial liability for gross negligence in connection with management irregularities, the discussion below focuses only on the implementation of staff rule 112.3."

Thus, the Secretary-General's report was not intended to and, accordingly, did not address the application of either financial rule 110.14 or 114.1, other than to note their application in cases like those before Property Survey Boards.

Analysis

5. To the extent that staff rule 112.3 and financial rules 110.14 (b) and 114.1 are essentially intended to serve similar purposes, in principle, the same standards of liability and due process should apply. In this respect, it would seem that the purposes underlying all three rules are: (a) to make staff members responsible and liable for financial losses suffered by the Organization because of those staff members' actions or inactions; and (b) to repair, partially or in full, such financial losses through deductions from the emoluments of the staff members concerned. This is not to deny that there may exist important distinctions vis-à-vis the purpose of the rules, or in some other manner—in respect of the particular categories of staff or staff activity involved. For example, certain staff may be held to a higher standard of duty due to the position they hold. These distinctions may be important at least for purposes of determining the degree of negligence involved in connection with the actions of those staff members, if not in other respects. Where the incumbent of a position is duty bound to ensure a high degree of care, what might otherwise be viewed as ordinary negligence could be viewed in regard to that individual as gross negligence. This is the situation, for example, in regard to trustees under the laws of many Member States.

6. In the end, the issue for the Organization is what should be the standard of care applied to impose financial liability on staff members for the actions of such staff members, and what procedures are necessary to ensure that staff members are accorded due process appropriate to their status as international civil servants.

Standard of care

7. As to the standard of care, the Office of Legal Affairs has consistently taken the position that, normally, staff members should not be liable for simple negligence. For example, the Office opined in 1995 on the subject of financial responsibility of United Nations staff members assigned to field missions for loss or damage to United Nations property and concluded:

“To err is human. In whatever activity staff are engaged they will make mistakes; i.e., they will be found to be negligent with the clarity of vision that comes from hindsight. The human tendency to make mistakes is a major reason why there is commercial liability insurance. We are not aware of any national system that generally establishes such personal liability in relation to its civil servants. Such a system, in effect, would make staff the unpaid insurers of the Organization. For that reason and because there is no element of UN salaries that is paid for staff to be insurers of the Organization, we are convinced that such a system would have an extremely difficult time in the Tribunal. As we understand, this is why in the past the UN practice has been to limit recovery to cases of gross negligence. Of course, negligence can be reflected in the PAS reports and, if it is repeated, may be a reason not to renew an appointment or to terminate a permanent appointment.”

8. While the 30 November 1995 advice concerned the subject of staff liability for damage to United Nations vehicles, the Office believes that, generally, the same standards should apply equally to other instances where the Organization seeks to hold staff members financially liable for their actions, for example under financial rules 110.4 and 114.1, recognizing that there may be policy or practical considerations for holding certain categories of staff members to a higher standard.

Due process

9. Similar conclusions might be drawn with respect to the procedures to be followed in applying this standard to staff members to ensure that appropriate due process has been accorded to staff members. The Office recommended in connection with the Secretary-General's report (A/54/793) with respect to the application of staff rule 112.3 to management irregularities that the procedures associated with the Joint Disciplinary Committee

be followed prior to the withholding of funds despite the fact that staff rule 112.3 makes no such provision (as is the case with financial rules 110.14 (b) and 114.1). As indicated in the Secretary-General's report (para. 11), due process under staff rule 112.3 would "generally be viewed as requiring at least notification to the staff member of an allegation of gross negligence and an opportunity to rebut the allegation. The application of staff rule 112.3 would therefore include preliminary fact-finding, notification to the staff member of an allegation of gross negligence, an opportunity to rebut the allegation and a referral to an advisory body, which would make a recommendation to the Secretary-General concerning the determination of gross negligence and the possible restitution."

10. The Office believes that consideration should be given to applying the same or similar procedures under financial rules 110.14 and 114.1, recognizing that there may be policy or practical considerations for applying different procedures to some categories of staff members or cases involving financial losses to the Organization resulting from the actions or inactions of staff members. Thus, there may be justification with regard to certain categories of staff or in certain cases for retaining the present procedures, relying on the opportunity for the concerned staff members to initiate a challenge in the United Nations Administrative Tribunal after the determination of liability and decision to withhold funds, rather than going through a procedure such as proposed in regard to staff rule 112.3 before imposing the deduction. However, the Office believes that the Tribunal is likely to look upon such a process with disfavour in the absence of clear and convincing policy and practical considerations.

11. In deciding on the procedures to be accorded to particular categories of staff members or cases, the Organization should keep in mind not only what is necessary and fair to protect the interests of the Organization, but also what is appropriate to protect the rights of staff members under the Charter of the United Nations, relevant General Assembly resolutions, rules and regulations of the Organization, and any relevant general principles of law. Ultimately, any procedures could be challenged by an affected staff member before the Tribunal.

12. In this respect, we have not been able to identify a precedent in the decisions of the Tribunal that is directly on point. As a general proposition, however, the Tribunal strives to ensure that staff members receive the due process to which they are expressly entitled pursuant to various regulations, rules or other administrative issuances, and are likely to give the staff the benefit of doubt if there is a serious question of whether a particular procedure applies to a staff member in a particular case. See, for example, Tribunal judgement No. 382, *Noble* (1987), paragraph XV, where the Tribunal ruled that the Administration's decision to withhold a staff member's wages because of her unauthorized absences was in gross derogation of the Applicant's rights; and judgement No. 551: *Mohapi* (1992), where the Tribunal rescinded the Administration's decision to recover ap-

proximately US\$ 170 from the Applicant as a result of the latter's failure to comply with the applicable financial rules of UNDP.

Conclusion

13. I recommend that the Organization carefully review both the standard of liability and the due procedures that are to be applied under financial rules 110.14 and 114.1, in the light of our recommendation that any decision to withhold funds generally be on the basis of a finding of gross negligence, and provide an opportunity before implementing such a decision for review by a duly constituted advisory body. As I have previously indicated, such a review could include the possibility of applying a different standard of care or procedure for ensuring due process in regard to particular categories of cases, for example, as is at present the practice in regard to cases before the Property Survey Board. However, such exceptions, if there are any, would have to be based on clear and convincing policy and practical considerations. The Office of Legal Affairs looks forward to participating in such review.

14 August 2002

PERSONNEL ISSUES

6. REPATRIATION GRANT TO A STAFF MEMBER WHO HAS RESIGNED FURTHER TO ALLEGATIONS OF MISCONDUCT—STAFF REGULATIONS 10.1 AND 10.2—DISCIPLINARY PROCEEDINGS AND THE JURISPRUDENCE OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

Memorandum to the Chief of Legal Affairs, Office of the United Nations High Commissioner for Refugees

1. I refer to your memorandum of 26 March 2002 on the above-mentioned case. I note that a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) had admitted in writing having participated in the submission of resettlement forms containing false information. While a letter containing allegations of misconduct was being prepared in accordance with administrative instruction ST/AI/371, the staff member submitted her resignation with immediate effect. You stated that, in view of the above-mentioned allegations, it was likely that the High Commissioner would have recommended that the staff member be summarily dismissed. You stated that you believed that the staff member was aware of such possibility. Moreover, you believed that the 30-day

notice period to which the Organization would be entitled would not have been sufficient to complete a disciplinary procedure against the staff member. Therefore, it was decided to accept her resignation with immediate effect. However, subsequently, the High Commissioner decided to suspend the payment of the repatriation grant due the staff member. He believed that the staff member had abused her right to resign in order to obtain those benefits. He therefore intends to permanently withhold such payment and pay her the costs of travel and transport of her personal effects to her place of home leave, thus treating her resignation as a summary dismissal. You seek our advice as to the legal implications of this course of action.

2. The course of action proposed in this case essentially means that the staff member's resignation would be treated as a summary dismissal and that she would be fined in the amount of the repatriation grant. If the former staff member decides to appeal against this decision to the United Nations Administrative Tribunal (which, in our view, is quite likely), the Tribunal would adjudicate this case on the basis of applicable United Nations rules and its jurisprudence on the matter. Staff regulations 10.1 and 10.2 and chapter X of the Staff Rules set out detailed provisions and procedures to be followed in disciplinary cases. As to the jurisprudence of the Tribunal, the most relevant cases are briefly described in paragraphs 3-5 below.

3. In judgement No. 877, *Abdulhadi* (1998), paragraph IV, the Tribunal noted "the Auditors' recommendation that disciplinary action be taken against the Applicant and that, based on the Auditors' 'strong suspicion' against the Applicant, suggested 'possible separation on grounds of serious misconduct'. Whatever were the Auditors' intentions, the Respondent should have interpreted such recommendation as suggesting that disciplinary proceedings be instituted The Tribunal finds that, considering the serious implications of the 'strong suspicion' voiced against the Applicant, as well as the Auditors' recommendation, the Respondent should not have terminated the Applicant without first holding disciplinary proceedings. Not only would such proceedings have been an appropriate forum to resolve the multiplicity of issues which had been raised in the Audit Report; such proceedings also would have had the added benefit of providing necessary due process to the Applicant ...".

4. In judgement No. 610, *Ortega* (1993), the Tribunal held in paragraph VIII that "the option of administrative action (rather than disciplinary proceedings) should only be resorted to when it does not prejudice or damage the position of staff and is not detrimental to staff Despite the stated reason for termination, the Applicant was essentially accused of forgery and fraudulent conversion. Where, as here, gross misconduct is alleged, such allegations should be investigated by a disciplinary board or committee".

5. Finally, in judgement No. 742, *Manson* (1995), the Tribunal ruled, in paragraph VI, as follows:

“It appears to the Tribunal that the most elementary considerations of fairness and due process would dictate that when a resignation is tendered, whether in response to a request or not, the options open to the Secretary-General are the following: (1) to accept the resignation as offered; (2) to reject it; (3) to initiate termination proceedings for unsatisfactory performance under the Staff Rules; (4) to initiate disciplinary proceedings in accordance with the Staff Rules; or (5) to enquire of the staff member whether he wishes to waive his rights under the Staff Rules, and is agreeable to the resignation being treated as a summary dismissal for serious misconduct. If the staff member is not agreeable, options (1)-(4) would, of course, remain open to the Secretary-General. The Tribunal notes that rejection of a resignation does not mean that a staff member is barred from leaving the Organization. It simply negates any inference of approval by the Secretary-General.”

6. In accordance with the above jurisprudence, a staff member who is accused of misconduct must be subjected to disciplinary proceedings and must be given the possibility to defend him/herself. Moreover, and particularly in view of the *Manson* judgement, a resignation cannot be considered as a summary dismissal unless the staff member has expressly waived his/her rights and agreed that such a voluntary resignation be treated as a summary dismissal. If that is not the case, the Secretary-General has various options, namely, to accept the resignation as such, to reject it and to initiate disciplinary proceedings.

7. From the information you provided, it does not appear that the staff member has ever waived her rights and agreed that her resignation should be treated as a summary dismissal. It is my view that, in the present case, the staff member's resignation should have been rejected and disciplinary proceedings instituted. However, since no such action was taken, it appears that at the present stage, there is no other choice than to treat the voluntary resignation as such and pay the repatriation grant. Otherwise, the staff member in question might successfully challenge the decision before the Tribunal if the course of action described in your memorandum were to be pursued. The Tribunal might order paying the former staff member the repatriation grant and would, most probably, award her additional compensation.

8. I note that in a subsequent memorandum of 22 April 2002 you advised us of a proposal consisting of “continuing disciplinary proceedings after the staff member's resignation. These proceedings could ... then lead to the suspension of the repatriation grant if the misconduct were found to be serious enough to justify summary dismissal. If the misconduct was found to be proven, but not serious enough to warrant summary dismissal, a fine could be imposed, which could be charged against the repatriation grant that otherwise would have been paid.”

9. In this regard, we note that, after a resignation of a staff member has been accepted, he/she is no longer under the authority of the Secretary-General and the latter has no power to institute disciplinary pro-

ceedings against the staff member. Accordingly, I share your view that, under United Nations Regulations and Rules, it is not possible to institute disciplinary proceedings against a former staff member whose resignation has already been accepted.

29 April 2002

7. LEGAL STATUS OF CERTAIN CATEGORIES OF UNITED NATIONS PERSONNEL SERVING IN PEACEKEEPING OPERATIONS—CIVILIAN POLICE AND MILITARY OBSERVERS—MILITARY MEMBERS OF MILITARY COMPONENTS

*Memorandum to the Under-Secretary-General,
Department of Peacekeeping Operations*

Introduction

1. I wish to refer to your note dated 10 April 2002 forwarding two notes verbales each dated 27 March 2002 from the Government of [Member State] (“the Government”) requesting the assistance of the Department of Peacekeeping Operations in clarifying the legal status of certain categories of United Nations personnel serving in peacekeeping operations. By your note, you request the input of the Office of Legal Affairs for a response to the Government, which “also reflects a desire expressed in the Special Committee on Peacekeeping Operations to seek a clarification of the status of civilian police”.

2. The Government, in its correspondence, has requested advice on the status of the following personnel:

(a) Military observers in the United Nations Mission for the Referendum in Western Sahara (MINURSO), the United Nations Iraq-Kuwait observation Mission (UNIKOM), the United Nations Mission in Ethiopia and Eritrea (UNMEE), the United Nations Observer Mission in Georgia (UNOMIG), the United Nations Truce Supervision Organization (UNTSO) and the United Nations Interim Administration Mission in Kosovo (UNMIK) vis-à-vis the United Nations and the countries or territories hosting these operations;

(b) Civilian police in UNMIK and the United Nations Transitional Administration in East Timor (UNTAET); and

(c) Members of troop contingents in the United Nations Disengagement Observer Force (UNDOF) and the United Nations Peacekeeping Force in Cyprus (UNFICYP).

3. The Government has also requested “detailed information” on, inter alia, the “procedures for the handling of cases of alleged misconduct, misdemeanour and criminal acts as well as relevant agreements of the

United Nations with host countries and administrations for these specific missions”.

Civilian police and military observers

Status

4. In accordance with customary principles and practices applicable to United Nations peacekeeping operations such as those mentioned above, civilian police monitors and military observers enjoy the status of “experts performing missions” for the United Nations under article VI of the Convention on the Privileges and Immunities of the United Nations (the Convention). This status is provided for in, *inter alia*, Status of Forces Agreements (SOFAs) or Status of Mission Agreements (SOMAs) that are concluded with Governments hosting peacekeeping operations. In the absence of such an agreement the legal basis for the status of civilian police monitors and military observers remains the Convention to which a Government hosting a peacekeeping operation is usually a party.

5. Unlike military personnel of national contingents who enjoy, *inter alia*, immunity from criminal jurisdiction in the State where the peacekeeping operation is deployed and are subject to the exclusive jurisdiction of their respective States, police monitors and military observers, as “experts performing missions” for the United Nations under article VI of the Convention, only enjoy immunity for purposes of the official acts they perform. Their privileges and immunities, which include immunity from personal arrest and detention, are granted solely to enable them to perform their official functions and, as such, they do not enjoy immunity from criminal jurisdiction in respect of criminal offences that they may commit in the host State.

6. Importantly, the United Nations is under a legal obligation *vis-à-vis* a host Government to uphold the provisions of a SOMA or SOFA. As these agreements provide that civilian police monitors and military observers enjoy the status of “experts performing missions” for the United Nations under article VI of the Convention, the United Nations recognizes that national authorities are in a position to take legal measures against a police monitor or military observer who has committed a criminal offence on its territory. To that end, the Secretary-General has, under article VI of the Convention, the right and duty to waive the immunity of an expert on mission such as a police monitor or military observer in any case where, in his opinion, this immunity would impede the course of justice. For these reasons, for example, repatriation is not provided for in either a SOMA or SOFA as the repatriation of a police monitor or military observer who has allegedly committed a criminal offence may give rise to a complaint from a host Government that the United Nations was acting in a manner that was inconsistent with the SOFA/SOMA.

7. As far as UNMIK and UNTAET are concerned, we wish to point out that the authority to administer East Timor and Kosovo was conferred

on the United Nations by the Security Council acting under Chapter VII of the Charter and, as such, no SOFAs were concluded for the United Nations peacekeeping operations in these territories. However, in UNMIK the Special Representative of the Secretary-General adopted a regulation (2000/47 of 18 August 2000) on the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo. This regulation provides that UNMIK personnel only enjoy immunity for purposes of the official acts they perform and that the Secretary-General has the right and duty to waive immunity if this immunity would impede the course of justice and if the immunity can be waived without prejudice to the interests of UNMIK (section 6 of the regulation). In UNTAET, while there was no separate regulation on privileges and immunities, the same principle applies, i.e. that UNTAET personnel only enjoy immunity for purposes of the official acts they perform. Furthermore, the SOFA to be concluded with the Government of an independent East Timor for the successor mission to UNTAET will provide, consistent with the practice mentioned above, that civilian police monitors and military observers enjoy the status of “experts performing missions” for the United Nations under article VI of the Convention.

Investigations

8. In the light of the above, it is important to determine the facts by way of an investigation into alleged acts of misconduct; in particular, whether it involves a criminal offence. Procedures for convening and conducting investigations including boards of inquiry (BOI) are, inter alia, set out in the draft Field Administration Manual and can also be provided for in the standing operating procedures (SOPs) of civilian police and military observers. If an investigation determines that a police monitor or military observer has violated internal rules or procedures, such as the SOP or the code of conduct, which per se does not involve the commission of a criminal act, then disciplinary action, which could include repatriation on these grounds, can be an appropriate sanction and would not be inconsistent with the obligations of the United Nations under the SOFA/SOMA and the Convention. However, if an investigation finds that an act of misconduct involves the alleged commission of a criminal offence that could lead to prosecution in the host State, the United Nations and the host Government would have to agree on whether or not criminal proceedings should be instituted and that this is specifically provided for in SOFAs concluded with host Governments.

Military members of military components

Status

9. In accordance with the customary principles and practices applicable to United Nations peacekeeping operations, military personnel of national contingents assigned to the military component of a United Nations

peacekeeping operation are subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences, which may be committed by them in the host territory.

10. This status is provided for in SOFAs, which contain a provision on the status of military components based upon article 47 (b) of the model SOFA (A/45/594), which provides as follows:

“Military members of the military component of the United Nations peacekeeping operation 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 [host country/territory].”

11. Furthermore, paragraph 41 of the model SOFA provides that:

“The military police of the United Nations peacekeeping operation shall have the power of arrest over the military members of the United Nations peacekeeping operation. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action.”

Investigations

12. However, even though military members of the military component are subject to the exclusive jurisdiction of their respective States in relation to criminal offences committed by them in the host country, such members are expected to cooperate with any investigation if directed to do so by the Special Representative of the Secretary-General or Force Commander. Such cooperation is provided for in the mission SOPs, as well as the draft Field Administration Manual mentioned above, which, in addition to setting out procedures for BOIs, also provides that the contingent commander should convene a contingent board of inquiry to investigate incidents involving any of his military personnel and the mission.

13. Finally, on this matter, we wish to point out that, if necessary, the reports of United Nations investigations are forwarded to the Governments concerned for appropriate action, including disciplinary action and, if necessary, prosecution.

3 May 2002

PROCEDURAL AND INSTITUTIONAL ISSUES

8. STATUS OF UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST AREA STAFF

Note to the Assistant Secretary-General of the Office of Human Resources Management

A facsimile, dated 3 May 2002, from the Executive Secretary of the International Civil Service Commission (ICSC) to the Assistant Secretary-General in charge of the Office of Human Resources Management, containing a number of questions concerning the status of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) area staff, was transmitted to the Office of Legal Affairs. The responses to these questions are set forth below.

Question 1. What is the legal status of UNRWA area staff?

UNRWA employs both internationally recruited staff and “area” staff. UNRWA area staff are not covered by the United Nations Staff Regulations and Rules. They are covered by the UNRWA Area Staff Regulations and Rules. (International UNRWA staff are covered by UNRWA International Staff Regulations and Rules.) The UNRWA International and Area Staff Rules are promulgated pursuant to General Assembly resolution 302 (IV) of 8 December 1949, which established UNRWA. Under that resolution, the Commissioner-General has general authority over Agency staff and has, with the agreement of the Secretary-General, promulgated regulations and rules governing the Agency’s staff.

Question 2. What kinds of contracts apply to area staff?

Area staff serve under letters of appointment that designate them as “Area Staff” and are signed by the Commissioner-General. The Area Staff Regulations provide for temporary indefinite appointments which have no expiration date specified in the letter of appointment and fixed-term appointments which have such an expiration date (regulation 4.4).

Question 3. The Executive Secretary has also sought a legal opinion on whether hazard pay should apply to area staff, if operative at the location where area staff work.

Administrative instruction ST/AI/2000/6 sets forth special entitlements for United Nations staff members serving at designated duty stations. Section 12 of that instruction on “Exceptional measures” provides, “At duty stations where very hazardous conditions, such as war or hostilities, prevail and where non-essential internationally recruited staff and family members of internationally recruited staff have been evacuated, the Chairman of the International Civil Service Commission may authorize the application of exceptional measures such as hazard-duty pay or a

special bonus to internationally recruited staff and locally recruited staff who remain at those duty stations and continue to report to work". This administrative instruction applies to United Nations staff recruited under the United Nations Staff Regulations and Rules.

The question whether UNRWA area staff should be entitled to hazard pay, "if operative" at the duty stations where area staff work, would be a policy decision to be taken in accordance with the established procedures.

7 May 2002

9. GRATIS PERSONNEL—VOLUNTARY CONTRIBUTION OF SERVICES TO THE DEPARTMENT OF PUBLIC INFORMATION BY A PRIVATE COMMUNICATIONS COMPANY

*Memorandum to the Chief of the Rules and Regulations Unit
of the Office of Human Resources Management*

1. I refer to your memorandum of 24 April 2002 seeking our advice on the offer by a company to provide the services of two of its officers, free of charge, to the Department of Public Information. In particular, at the suggestion of the Controller, you seek our advice as to whether this offer would be subject to the restrictions on accepting "gratis personnel".

2. Pursuant to General Assembly resolution 51/243 and administrative instruction ST/AI/1999/6, "gratis personnel" are personnel provided to the United Nations by a Government "or other entity" that is responsible for the remuneration of the services of the personnel. Your memorandum to us of 24 April 2002 suggests that, despite the words "or other entity" in the General Assembly resolution and its implementing administrative instruction, "the main focus is clearly on personnel provided by Governments or governmental/quasi-governmental entities". We find no such limitation of the words "or other entity" in the wording of either the resolution or the administrative instruction, the report of the Secretary-General which led to the resolution (A/51/688 and Corr.1 and Add.1-3) or the report of the Advisory Committee on Administrative and Budgetary Questions on the subject (A/51/813).

3. Indeed, to interpret the words in this manner would practically read them out of the resolution and the administrative instruction. Thus, such an interpretation would have the result that not only personnel offered by commercial entities but also personnel offered by non-governmental organizations and intergovernmental organizations would be excluded from the restrictions established by the General Assembly on the acceptance and use of gratis personnel. We are unaware of anything in the background to the consideration by the General Assembly of the subject of gratis personnel, let alone the wording of its resolutions on the subject, to support such intent.

4. You have suggested that section 3.1 of administrative instruction ST/AI/1999/6 provides an indication that the restrictions in the resolution and administrative instruction on the use of gratis personnel extend only to personnel provided by Governments or governmental/quasi-governmental entities. That provision states:

“When, at the time of preparation of a budget, it is foreseen that, under that budget, there will be needs which fulfil the conditions of section 2.1 (a) of the present instruction, the department or office where the services are to be rendered shall approach all Member States to inform them of the specific needs to be met by gratis personnel, and shall request Member States to identify within two months one or more individuals who could provide the required expertise.”

5. We do not see that this provision necessarily supports the conclusion that the words “or other entity” are intended to refer only to governmental/quasi-governmental entities. This provision implements paragraph 11 (d) of resolution 51/243, which states:

“The selection process for gratis personnel should be transparent and conducted on as wide a geographic basis as possible, and, if there is a need for gratis personnel as provided for in the present resolution, all Member States should be informed”.

6. Seen in this light, it seems at least equally plausible that this provision is intended to promote transparency and geographic breadth in the selection of gratis personnel, rather than to limit the restrictions on the acceptance and use of gratis personnel to personnel provided by Governments or governmental/quasi-governmental entities. Moreover, one can find in the relevant documentation indications that the wording is not intended to be so limited. For example, the model Memorandum of Agreement between the United Nations and the donor of gratis personnel, annexed to ST/AI/1999/6, states, in a footnote to the title of the model agreement, “[i]n the event an ‘other entity’ provides personnel under the agreement, rather than a Government, the name of that entity would be used”.

7. For the foregoing reasons, we believe that the restrictions on the acceptance and use of gratis personnel apply to the personnel offered to the Department of Public Information by a company. However, we would of course be willing to consider any further views that you may have on this point.

8. There are two types of gratis personnel. “Type I” gratis personnel have a historical association with the United Nations and serve under established regimes, including associate experts and Junior Professional Officers for technical cooperation projects, technical cooperation experts on non-reimbursable loans and interns. “Type II” gratis personnel go beyond the traditional area of technical cooperation and do not serve under any such established regime.

9. The memorandum of 11 March 2002 from the interim Head, Department of Public Information, to the Controller (attached to your memorandum to us) states that the personnel offered by a company would provide public relations services in connection with the worldwide awareness campaign in support of the International Conference on Financing for Development. It seems doubtful to us that such personnel could be considered type I gratis personnel. We assume that they would not be associate experts, Junior Professional Officers or interns. As to whether they could be regarded as technical cooperation experts who would serve under non-reimbursable loans, we point out that the report of the Secretary-General on gratis personnel, which forms the basis of the decisions of the General Assembly on this subject, makes it clear that such technical cooperation experts “assist in the execution of the technical cooperation programme of the United Nations” in accordance with the policies and procedures established in administrative instruction ST/AI/231/Rev.1 (see A/51/688, paras. 19 and 21). Administrative instruction ST/AI/231/Rev.1 specifies that such non-reimbursable loans may be negotiated for the acquisition of services required to assist in the execution of technical assistance activities, that they may not be used for secretariat-type posts or for functions normally authorized under the regular programme budget and that they may be used only in respect of services away from United Nations Headquarters or the United Nations Offices at Geneva and Vienna (excluding UNCTAD and ECE) (see ST/AI/231/Rev.1, paras. 4 and 5). From the description of the services to be provided by the (company) personnel, it is doubtful that they would meet these requirements.

10. If the personnel would be type II gratis personnel, as seems more likely, the relevant provisions of resolution 51/243 of 15 September 1997 would apply. In that resolution, the General Assembly decided that the Secretary-General can accept type II gratis personnel only in the following circumstances:

(a) After the approval of a budget, to provide expertise not available within the Organization for very specialized functions, as identified by the Secretary-General, and for a limited and specified period of time;

(b) To provide temporary and urgent assistance in the case of new and/or expanded mandates of the Organization, pending a decision by the General Assembly on the level of resources required to implement those mandates.

11. In several subsequent resolutions, the General Assembly reaffirmed its decisions in resolution 51/243 and repeatedly requested the Secretary-General to ensure strict compliance with its provisions.

12. Pursuant to these resolutions, ST/AI/1999/6 provides, among other things, that the Secretary-General may accept type II gratis personnel “only on an exceptional basis”, and provided that the conditions referred to in (a) or (b) in paragraph 7 above are met (see ST/AI/1999/6, sec-

tion 2.1). It is for the relevant operational units to determine whether these and the other conditions for the acceptance of gratis personnel are met with respect to the offer by the company.

8 May 2002

10. GRATIS PERSONNEL—REGIME WITH RESPECT TO PERSONNEL OF THE UNITED NATIONS MONITORING, VERIFICATION AND INSPECTION COMMISSION—SECURITY COUNCIL RESOLUTION 1284 (1999)

*Memorandum to the Assistant Secretary-General for
Human Resources Management*

Introduction

1. I refer to your memorandum of 6 November 2002, seeking our views on a paper submitted to you by the Permanent Mission of [Member State] contending that the General Assembly resolutions on gratis personnel, including the restrictions on the acceptance of gratis personnel, do not apply to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC). You also asked whether, in the event that we were to conclude that the resolutions do not apply to UNMOVIC and gratis personnel were to be accepted for UNMOVIC, the Secretary-General should inform the General Assembly of this.

2. It is our understanding that the Permanent Mission of [Member State] has raised this issue in the particular context of the UNMOVIC inspection teams. The contention in the note from the Permanent Mission that the General Assembly resolutions on gratis personnel do not apply to UNMOVIC is based on the argument that the resolutions apply only to activities that are financed by assessed budgets approved by the General Assembly, i.e. activities financed from the regular budget, peacekeeping activities and the war crimes tribunals. The note argues that, since UNMOVIC is financed from the proceeds of Iraqi oil sales under the oil-for-food programme, the resolutions on gratis personnel do not apply to UNMOVIC. In this regard, it is our understanding that the budget of UNMOVIC is not approved by the General Assembly, but is established by UNMOVIC itself.

3. For reasons discussed below, we conclude that UNMOVIC is not subject to the restrictions in the General Assembly resolutions relating to the acceptance of gratis personnel by the Secretary-General, but for reasons different from those advanced in the note from the Permanent Mission of [Member State]. As will be elaborated below, the Security Council has established a regime with respect to personnel of UNMOVIC, which includes the possibility of accepting experts contributed cost-free by Governments.

4. In view of this, there is no need to address in this context the question of whether the General Assembly resolutions on gratis personnel apply only to activities financed by assessed budgets approved by the Assembly, or to regular budget activities, peacekeeping activities or the tribunals. In this regard, however, we would note that the resolution does not by express terms limit its application to such activities. Moreover, it appears from the basic General Assembly resolution on gratis personnel, 51/243 of 15 September 1997, and from the report of the Secretary-General on which it was based (A/51/688 and Corr.1 and Add.1-3; see e.g. paras. 10 and 13), that a principal motivation for the resolution was the General Assembly's "serious concern at the impact on the geographical balance in some parts of the Secretariat of the presence of gratis personnel ...", and related concerns. Such concerns were not necessarily limited to activities financed from assessed budgets approved by the General Assembly, although it is true that the Secretary-General and the General Assembly had such activities particularly in mind.

Personnel of UNMOVIC

5. The mandate of UNMOVIC was established in Security Council resolution 1284 (1999). Paragraph 6 of that resolution requested the Executive Chairman of UNMOVIC to submit to the Council, "in consultation with and through the Secretary-General", for the Council's approval, an organizational plan for UNMOVIC, including, among other things:

"... staffing with suitably qualified and experienced personnel, who would be regarded as international civil servants subject to Article 100 of the Charter of the United Nations, drawn from the broadest possible geographical base, including, as [the Executive Chairman] deems necessary, from the international arms control organizations ...".

6. In its resolution 1441 (2002), adopted on 8 November 2002, the Security Council stated, in paragraph 7, that "UNMOVIC and IAEA shall determine the composition of their inspection teams and ensure that these teams are composed of the most qualified and experienced experts available". It further provided in that paragraph that "[a]ll UNMOVIC and IAEA personnel shall enjoy the privileges and immunities corresponding to those of experts on mission, provided in the Convention on the Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the IAEA".

7. On 6 April 2000, the Secretary-General transmitted to the Security Council the organizational plan requested by the Council in its resolution 1284 (1999) (S/2000/292). The operational plan was prepared by the Executive Chairman, in consultation with the Secretary-General. The operational plan stated:

“The staff [of UNMOVIC] will be paid by the United Nations and serve under the appropriate United Nations conditions of employment. Rosters will be prepared with the names of persons with special skills and expertise to supplement UNMOVIC staff on inspection teams as required. ... When called upon to serve, they will be given United Nations contracts. *Cost-free experts may be engaged only in special circumstances and with the express approval of the Executive Chairman*” (emphasis added) (para. 3).

“While the United Nations Special Commission (UNSCOM) relied mainly on staff seconded from and paid by national Governments, the present plan envisages that *most* staff [of UNMOVIC] will be United Nations employees subject to Article 100 of the Charter, which requires that they shall neither seek nor receive instructions from any Government and that Member States shall not seek to influence them in the discharge of their responsibilities. The staff will be required to respect strict rules of confidentiality. This will contribute to giving ‘a clear United Nations identity’ to the Commission ... (emphasis added) (para. 5).

“Staff recruitment will take place with the aim of securing the highest standards of efficiency, competence and integrity, in accordance with Article 101 of the Charter, and staff, including the staff of the inspection teams, will be drawn from the broadest possible geographic base. In recruiting UNMOVIC staff, the gender balance will also be a consideration” (para. 7).⁶

8. The Security Council approved the operational plan, as being consistent with paragraph 6 of Security Council resolution 1284 (1999) (see S/2000/311).

9. Accordingly, in its resolutions, and by virtue of its approval of the operational plan referred to above, the Security Council has established a regime for personnel of UNMOVIC. In recruiting such personnel, the Executive Chairman must be guided by the resolutions and the operational plan. While, under the operational plan, “most” personnel of UNMOVIC, including its inspection teams, are to be staff members of the United Nations, the plan specifically provides the Executive Chairman with authority to accept contributions of experts from Governments cost-free, particularly where, in his opinion, this would be the most expeditious, and possibly the only, way of obtaining specialized skills and experience required to carry out the mandate of UNMOVIC. Such experts, as well as the other UNMOVIC inspectors, would have the status of experts on mission. Of course, the Executive Chairman may decide not to accept such personnel. In this regard, the Executive Chairman has, through the Secretary-General, reported to the Security Council that he is attempting to avoid relying heavily on such personnel (see fourth quarterly report of the Executive Chairman, S/2001/177, annex, para. 2).

Reporting to the General Assembly

10. Finally, I turn to your question as to whether the Secretary-General should report to the General Assembly should gratis personnel be accepted for UNMOVIC. In this regard, I refer to the comments above regarding the scope of the interest of the General Assembly with respect to the use of gratis personnel in the Secretariat. I also note that past reports of the Secretary-General to the General Assembly on the use of gratis personnel in the Secretariat included gratis personnel serving with UNSCOM and UNMOVIC (see, for example, A/52/709, A/55/728 and A/56/839). I see no reason why this practice should not continue. In doing so, however, the Secretary-General might indicate that the personnel in UNMOVIC are subject to the regime established by the Security Council for personnel of UNMOVIC.

11 November 2002

11. REGULATIONS GOVERNING THE STATUS, BASIC RIGHTS AND DUTIES OF OFFICIALS OTHER THAN SECRETARIAT OFFICIALS, AND EXPERTS ON MISSION (ST/SGB/2002/9)—STATUS OF MEMBERS OF THE BOARD OF AUDITORS AND THEIR STAFF—UNITED NATIONS FINANCIAL REGULATIONS

Memorandum to the Executive Secretary of the Board of Auditors

1. This is in response to your memorandum, dated 29 October 2002, seeking our advice whether members of the Board of Auditors and their staff and any other personnel contracted by the members to carry out audit work are covered by the Secretary-General's Bulletin ST/SGB/2002/9, "Regulations governing the status, basic rights and duties of officials other than Secretariat officials, and experts on mission" (hereafter, the Bulletin).

Scope of the Bulletin

2. Since Board members may also perform external audits for other organizations, let me at the outset make clear that the Bulletin only covers external audit work performed for the United Nations and its funds and programmes. It has no application to missions performed (i.e. external audit work) for other international organizations.

3. The Bulletin covers two classes of persons. The first class is "officials other than Secretariat officials" and the second class is "experts on mission". Paragraph 2 of the Bulletin explains that "officials other than Secretariat officials" cover a very limited class of persons so designated by the Assembly who provide full-time services to the United Nations. Paragraph 3 of the Bulletin explains that experts on mission are accorded that status either by virtue of a contract with the United Nations or because they are *designated* by a United Nations organ to carry out missions or functions for the United Nations, such as rapporteurs for the human rights bodies.

4. The description of “experts on mission” in paragraph 3 of the Bulletin originates from the definition by the International Court of Justice in the *Mazilu* case (*I.C.J. Reports*, 1989, p. 177) which noted that although the Convention did not define experts on mission “the purpose of Section 22 is nevertheless 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 experts thus appointed or elected* may or may not be remunerated, may or may not have a contract, may be given a task requiring work over a lengthy period or a short time” (para. 47) (emphasis added). The Court, in the *Cumaramswamy* case (advisory opinion of 29 April 1999), cited this approach with approval, emphasizing that an expert was entrusted with a mission *by the United Nations* (para. 43) (emphasis added). The Court also noted, as a corollary to the concept that an expert was acting for the United Nations, that the United Nations had to accept responsibility for the acts of such agents (para. 66). Underlying the notion of an expert on mission is that they are appointed by the Secretary-General or a United Nations organ.

Members of the Board of Auditors

5. The members of the Board of Auditors are appointed by the General Assembly to carry out the mandate set out in article XII and the annex to the United Nations Financial Regulations.

6. It is clear that the members of the Board of Auditors are experts on mission since they are designated by the General Assembly and perform a mission or function for a principal organ of the United Nations (the General Assembly) and are accountable to the Assembly to carry out that function in accordance with the mandate of the General Assembly set out in article XII and the annex to the United Nations Financial Regulations. It is also clear that a member cannot be an “official other than a Secretariat official” since the member must be the Auditor-General of his or her State and can remain a member of the Board of Auditors only as long as he or she holds that office (see financial regulation 12.3). By definition, the member is performing *independent external audits* of the organization and its Secretariat and other organs and thus is not an “official other than a Secretariat official”.

7. The instructions to new members should thus request them to make the written declaration required by regulation 1 (*b*), which requires them to discharge their audit duties with only the interests of the United Nations in view and we understand that the current members could sign the declaration at the next meeting in December. The declaration seems quite consistent with the duties conferred on the Board by article XII of the Financial Regulations and its annex since the Board reports and is responsible to the General Assembly. It ought also to be recalled that provisions in the Regulations governing the duties of experts on mission are

general provisions which must yield to the *specific mandate* placed by the Assembly on the members by the terms of article XII and the annex to the Financial Regulations (for example regulation 2 (g) prohibits an expert from accepting payments from a national Government, which is permitted in the case of members by the Financial Regulations with the United Nations reimbursing the Government for the costs). Should any member have difficulties with the wording in the declaration, please contact us.

8. You, as Executive Secretary to the Board of Auditors and a staff member of the United Nations, could witness the signature of the members as an authorized representative of the Secretary-General.

Staff and other personnel of members of the Board of Auditors

9. The letters sent by the Secretariat at the end of 2000, informing members of the terms and conditions of appointment, note that members are entitled to an amount in excess of \$3.5 million for performing the external audits in a biennium. That amount is to defray the cost of audits undertaken by the staff and any personnel engaged by the member to carry out external audit functions. You informed us that members have two levels of staff: a full-time Director of External Audit and, for at least one member, a full-time deputy. Members also have teams from their audit office who come for a few weeks to carry out specific audit duties and members may also engage consultants or firms to carry out special tasks.

10. The staff and other personnel contracted by a member to help discharge the functions bestowed on the member have a contractual relationship with the member *and not with the United Nations*. They are accountable only to the member.

11. We consider that the audit teams are clearly not experts on mission since they are not appointed by the Secretary-General or by a United Nations organ, but are assigned or hired by a member of the Board of Auditors. Such staff and consultants thus do not have to sign the declaration required of experts on mission.

Full-time Directors of External Audit

12. The rules of procedure of the Board of Auditors envisage that the full-time Directors of External Audit *represent the members* as the members cannot be continually present at Headquarters. However, they are neither appointed by the Secretary-General or by the General Assembly, nor are they accountable to the Secretary-General or the General Assembly. They are solely accountable to the member of the Board of Auditors who appointed them. In my view, therefore, the Directors of External Audit are not experts on mission for the United Nations and thus they do not have to sign the declaration required of experts on mission.

United Nations travel certificates

13. The full-time Directors of External Audit and other personnel and consultants engaged by the members may, however, continue to be given United Nations travel certificates since section 26 of the Convention on the Privileges and Immunities of the United Nations enables certificates to be given to “experts on mission and other persons” who are travelling “on the business of the United Nations”, and it is clear that the duties of the Directors and other personnel and consultants may be described as being engaged “on the business of the United Nations” even though they do not work for the United Nations.

22 November 2002

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 2002.]

NOTES

¹ *United Nations Juridical Yearbook 1973*, pp. 171-174.

² *United Nations Juridical Yearbook 1978*, pp. 192-195.

³ *Ibid.*, pp. 193-194.

⁴ We were informed by your Office that the donor involved in the second agreement cited in paragraph 38 of the attachment to your memorandum was also USAID.

⁵ Since staff rules 212.2 and 312.2 contain provisions similar to those of staff rule 112, references to staff rule 112.3 in this legal opinion should be understood to include staff rules 212.2 and 312.2.

⁶ In this regard, the Executive Chairman has reported to the Security Council, through the Secretary-General, that he has approached all Member States seeking their assistance in identifying potentially interested candidates for UNMOVIC (first quarterly report of the Executive Chairman, S/2000/516, annex, para. 12).

Part Three

**JUDICIAL DECISIONS ON QUESTIONS
RELATING TO THE UNITED NATIONS
AND RELATED INTERGOVERNMENTAL
ORGANIZATIONS**

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The “*Volga*” Case (*Russian Federation v. Australia*)

Article 292, “Prompt release of vessels and crews”, of the United Nations Convention on the Law of the Sea—Factors determining a reasonable bond for release of a vessel or its crew

JUDGMENT

Present: President NELSON; Vice-President VUKAS; Judges CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, CHANDRASEKHARA RAO, AKL, ANDERSON, WOLFRUM, TREVES, MAR-SIT, NDIAYE, JESUS, BALLAH, COT; Judge ad hoc SHEARER; Registrar GAUTIER

THE TRIBUNAL,

composed as above,

after deliberation,

delivers the following Judgment:

Introduction

1. On 2 December 2002, an Application under article 292 of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”) was filed by facsimile with the Registry of the Tribunal by the Russian Federation against Australia concerning the release of the *Volga* and members of its crew. On the same day, a letter dated 29 November 2002 from the Deputy Minister of Foreign Affairs of the Russian Federation authorizing Mr. Pavel Grigorevich Dzubenko, Deputy Director, Legal Department, Ministry of Foreign Affairs of the Russian Federation, to act as Agent of the Russian Federation was transmitted by facsimile. A copy of the Application was sent on that date by a letter of the Registrar to the

Minister for Foreign Affairs of Australia and also in care of the Ambassador of Australia to Germany.

2. In accordance with article 112, paragraph 3, of the Rules of the Tribunal (hereinafter “the Rules”), the President of the Tribunal, by Order dated 2 December 2002, fixed 12 and 13 December 2002 as the dates for the hearing with respect to the Application. Notice of the Order was communicated forthwith to the parties.

3. By letter from the Registrar dated 2 December 2002, the Minister for Foreign Affairs of Australia was informed that the Statement in Response of Australia, in accordance with article 111, paragraph 4, of the Rules, could be filed with the Registry not later than 96 hours before the opening of the hearing.

4. The Application was entered in the List of cases as Case No. 11 and named the “*Volga*” Case.

5. Pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, the Secretary-General of the United Nations was notified by the Registrar on 2 December 2002 of the receipt of the Application.

6. On 3 December 2002, the Agent of the Russian Federation transmitted to the Tribunal a correction of the Application. This connection was accepted by leave of the President in accordance with article 65, paragraph 4, of the Rules.

7. In accordance with article 24, paragraph 3, of the Statute of the Tribunal (hereinafter “the Statute”), States parties to the Convention were notified of the Application by a note verbale from the Registrar dated 3 December 2002.

8. On 4 December 2002, the Registrar was notified of the appointment of Mr. William McFadyen Campbell, First Assistant Secretary, Office of International Law of the Attorney-General’s Department of Australia, as Agent of Australia, by a letter transmitted by facsimile from the Minister for Foreign Affairs of Australia. The original of the letter was transmitted by bearer on 11 December 2002.

9. In accordance with articles 45 and 73 of the Rules, the President held a teleconference with the Agents of the parties on 6 December 2002, during which he ascertained their views regarding the order and duration of the presentation by each party and the evidence to be produced during the oral proceedings.

10. On 7 December 2002, the Agent of the Russian Federation submitted by bearer the original of the Application, which incorporated the correction referred to in paragraph 6. The original of the letter from the Deputy Minister of Foreign Affairs of the Russian Federation referred to in paragraph 1 was transmitted by bearer on 12 December 2002.

11. On 7 December 2002, the Australian Government filed its Statement in Response, a copy of which was transmitted forthwith to the Agent of the Russian Federation.

12. On 11 December 2002, the Agent of the Russian Federation and the Agent of Australia submitted documents in order to complete the documentation, in accordance with article 63, paragraph 1, and article 64, paragraph 3, of the Rules. Copies of the documents presented by each party were forwarded to the other party.

13. On 4 December 2002, Australia notified the Tribunal of its intention to choose Mr. Ivan Shearer AM, Challis Professor of International Law, University of Sydney, Australia, to participate as judge ad hoc pursuant to article 17, paragraph 2, of the Statute. By a letter of the Registrar dated 4 December 2002, the Agent of the Russian Federation was informed of the intention of Australia to choose Mr. Shearer as judge ad hoc and was invited to furnish any observation by 5 December 2002.

14. Since no objection to the choice of Mr. Shearer as judge ad hoc was raised by the Russian Federation and none appeared to the Tribunal itself, Mr. Shearer was admitted to participate in the proceedings, after having made the solemn declaration required under article 9 of the Rules at a public sitting of the Tribunal held on 11 December 2002.

15. After the closure of the written proceedings and prior to the opening of the oral proceedings, the Tribunal held initial deliberations on 11 December 2002 in accordance with article 68 of the Rules.

16. On 11 December 2002, a list of questions which the Tribunal wished to put to the parties was communicated to the Agents.

17. On 12 December 2002, the Agent of the Russian Federation transmitted by bearer a letter dated 5 December 2002 from the Deputy Minister of Foreign Affairs of the Russian Federation confirming the appointment of Mr. Valery Sergeevich Knyazev, Head of Division, Legal Department, Ministry of Foreign Affairs of the Russian Federation, and Mr. Kamil Abdulovich Bekiashev, Chair for International Law, Moscow State Academy for Law, as Co-Agents of the Russian Federation.

18. On 12 December 2002, the Registrar was notified by a letter of the same date from the Ambassador of Australia to the Federal Republic of Germany of the appointment of Mr. John Langtry, Minister and Deputy Head of Mission, Embassy of Australia, Berlin, Federal Republic of Germany, as Co-Agent of Australia.

19. On 12 and 13 December 2002, the President held consultations with the Agents of the parties in accordance with article 45 of the Rules.

20. Prior to the opening of the oral proceedings, the Agent of the Russian Federation and the Agent of Australia communicated information required under paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal.

21. Pursuant to article 67, paragraph 2, of the Rules, copies of the pleadings and documents annexed thereto were made accessible to the public on the date of the opening of the oral proceedings.

22. On 12 December 2002, the Agent of Australia submitted additional documents. In accordance with article 71 of the Rules, copies of these documents were communicated to the other party.

23. On 13 December 2002, pursuant to the consultations referred to in paragraph 19, the Agent of Australia submitted a map showing Australia's exclusive economic zone ("EEZ") around Heard Island and the McDonald Islands, a copy of which was transmitted to the other party.

24. During the hearing on 13 December 2002, Australia submitted an additional document. Pursuant to article 71 of the Rules, a copy of the document was communicated to the other party. By a letter dated 15 December 2002, the Russian Federation raised objections to the submission of the document. Further to a decision by the Tribunal, by a letter of the same date, the Registrar requested the Agent of the Russian Federation to offer any comments on the document by 16 December 2002. Comments were received from the Russian Federation within the time limit set.

25. Oral statements were presented at four public sittings held on 12 and 13 December 2002 by the following:

On behalf of the Russian Federation: Mr. Pavel Grigorevich Dzubenko, Agent; Mr. Andrew Tetley, Counsel; Mr. Paul David, Counsel

On behalf of Australia: Mr. William Campbell, Agent and Counsel; Mr. Henry Burmester QC, Counsel; Mr. James Crawford SC, Counsel; Mr. David Bennett AO QC, Counsel

26. During the oral proceedings, Counsel for Australia presented a number of maps, charts, tables, photographs and extracts from documents which were displayed on video monitors.

27. At the hearing held on 13 December 2002, Counsel for Australia replied orally to the questions referred to in paragraph 16. These responses were subsequently submitted in writing.

28. In the Application of the Russian Federation and in the Statement in Response of Australia, the following submissions were presented by the parties:

On behalf of the Russian Federation, in the Application:

The Applicant applies to the International Tribunal for the Law of the Sea ("**Tribunal**") for the following declarations and orders:

—A declaration that the Tribunal has jurisdiction under article 292 of the United Nations Convention on the Law of the Sea 1982 ("**UNCLOS**") to hear the application.

—A declaration that the application is admissible.

- A declaration that the Respondent has contravened article 73(2) of UNCLOS in that the conditions set by the Respondent for the release of the *Volga* and three of its officers are not permitted under article 73(2) or are not reasonable in terms of article 73(2).
- An order that the Respondent release the *Volga* and the officers and its crew if a bond or security is provided by the owner of the vessel in an amount not exceeding AU\$ 500,000 or in such other amount as the Tribunal in all the circumstances considers reasonable.
- An order as to the form of the bond or security referred to in paragraph 1 (d).
- An order that the Respondent pay the costs of the Applicant in connection with the application.

On behalf of Australia, in the Statement in Response:

Australia requests that the Tribunal decline to make the orders sought in paragraph 1 of the Memorial of the Russian Federation. The Respondent requests the Tribunal make the following orders:

(1) That the level and conditions of bond set by Australia for the release of the *Volga* and the level of bail set for the release of the crew are reasonable; and

(2) That each party shall bear its own costs of the proceedings.

29. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the parties at the end of the hearing:

On behalf of the Russian Federation,

The Russian Federation asks that the Tribunal make the following orders and declarations:

(a) A declaration that the Tribunal has jurisdiction under article 292 of the United Nations Convention on the Law of the Sea 1982 (“UNCLOS”) to hear the application.

(b) A declaration that the application is admissible.

(c) A declaration that the Respondent has contravened article 73(2) of UNCLOS in that the conditions set by the Respondent for the release of the *Volga* and three of its officers are not permitted under article 73(2) or are not reasonable in terms of article 73(2).

(d) An order that the Respondent release the *Volga* and the officers and its crew if a bond or security is provided by the owner of the vessel in an amount not exceeding AU\$ 500,000 or in such other amount as the Tribunal in all the circumstances considers reasonable.

(e) An order as to the form of the bond or security referred to in paragraph 1 (d).

(f) An order that the Respondent pay the costs of the Applicant in connection with the application.

On behalf of Australia,

For the reasons set out in the Respondent's written and oral submissions, the Respondent requests that the Tribunal reject the application made by the Applicant.

Factual background

30. The *Volga* is a long-line fishing vessel flying the flag of the Russian Federation. Its owner is Olbers Co. Limited, a company incorporated in Russia. The Master of the *Volga* was Alexander Vasilkov, a Russian national.

31. According to the Certificate of Registration, the *Volga* was entered in the State Ship's Registry of Taganrog Maritime Fishing Port on 6 September 2000. On 24 November 2000, the Russian Federation provided the *Volga* with a fishing licence which reads, inter alia, as follows:

[Translation from Russian]

Permitted types of activity: Commercial fishing, namely harvesting of fish, other marine animals and plants for commercial purposes, undertaken on the continental shelf and in the exclusive economic zone of the Russian Federation, in the open sea and coastal zones of foreign countries. [...]

Conditions under which the permitted types of activity can be conducted: Observance of the rules governing the fishing industry, the conditions of international agreements, the rules of safe navigation and supply of standard information on catches.

Term of validity of licence: 3 (three) years

32. On 7 February 2002, at approximately 1223 hours (or 0423 hours GMT), the *Volga* was boarded by Australian military personnel from an Australian military helicopter from the Royal Australian Navy frigate *HMAS Canberra*. At the time of boarding, the *Volga* was at the approximate position 51°35S, 78°47E, which is a point located beyond the limits of the EEZ of the Australian Territory of Heard Island and the McDonald Islands.

33. The Applicant states that at no time prior to the boarding did the helicopter or any Australian ship or aircraft on government service require or order the vessel to stop while the vessel was in the internal waters, the territorial sea, the contiguous zone or the EEZ of Australia and that at no time prior to the boarding did the vessel receive any communication from the helicopter or any Australian ship or aircraft on government service. The Respondent maintains that a broadcast was made from the helicopter

to the *Volga*, which was observed to be fleeing from the Australian EEZ, indicating that the vessel was to be boarded; that calculations made at the time on board *HMAS Canberra* indicated that the *Volga* was still in the Australian EEZ; and that, subsequently, more detailed recalculations indicated that at the time of the first communication the vessel was a few hundred metres outside the zone.

34. After the boarding, on 7 February 2002, the Master of the *Volga* was served with a notice of apprehension by the commanding officer of *HMAS Canberra*, in the following terms:

NOTICE OF APPREHENSION

Your vessel was today boarded by the Royal Australian Navy for the purpose of determining if it has been conducting illegal fishing operations in the Australian Heard Island/McDonald Island Exclusive Economic Zone.

Officers of the Royal Australian Navy and the Australian Fisheries Management Authority have now determined that your vessel has in fact been illegally fishing in the EEZ and your vessel has therefore been apprehended under the Australian Fisheries Management Act of 1991. A Naval Steaming Party will be embarked in your vessel with orders to proceed to an Australian port and you are directed to comply with the orders of the Officer in Charge of the Steaming Party.

You will remain in Command of your vessel, subject to the directives of the OIC Steaming Party. The conduct, compliance and discipline of your crew will remain your responsibility and you should note that you may be called to account for the actions of yourself and your crew in any subsequent proceedings.

You should be in no doubt that it is the Royal Australian Navy's intention that your vessel will be taken to an Australian port. This will be achieved in the safest and most expeditious manner and your co-operation in achieving this is requested.

35. After being apprehended, the *Volga* was escorted to the Western Australian port of Fremantle, where it arrived on 19 February 2002. On the same date, the Master and crew of the *Volga* were detained pursuant to a notice of detention issued under the Fisheries Management Act 1991 for the purposes of determining, during the period of detention, whether or not they would be charged for the offences against any one or more of sections 99, 100, 100A, 101, 101A and 101B of the said Act.

36. On 20 February 2002, a notice of seizure was served on the Master, which reads as follows:

To the Master of the boat VOLGA, I, Thomas J. Morris, an officer as defined in Section 4 of the *Fisheries Management Act 1991* (the

Act), hereby give notice pursuant to Section 106C of the Act, that the following things have been seized:

1. the boat VOLGA (including *all* nets, traps and equipment and catch).

The things described above will be condemned as forfeited unless the owner of the things or the person who had possession, custody or control of these things immediately before they/it were/was seized, gives a written claim in English for the things to the Managing Director of AFMA within 30 days of the date of this notice.

A written claim must be given to:

The Managing Director
Australian Fisheries Management Authority

...

37. A valuation report dated 27 February 2002, prepared on the instructions of the Australian authorities for bonding purposes, valued the *Volga* at US\$ 1 million and fuel, lubricants, and equipment at a total of AU\$ 147,460.

38. On 6 March 2002, the chief mate, the fishing master and the fishing pilot (hereinafter “the three members of the crew”), all of whom are Spanish nationals, were charged in the Court of Petty Sessions of Western Australia with an indictable offence that:

On or about the 7th day of February 2002 [the three members of the crew] did at a place in the Australian Fishing Zone use a foreign fishing boat, namely the VOLGA for commercial fishing without there being in force a foreign fishing licence authorising the use of the said boat at that place, contrary to section 100(2) of the *Fisheries Management Act 1991*.

39. Section 100 of the Fisheries Management Act 1991 provides:

Using foreign boat for fishing in AFZ—strict liability offence

(1) A person must not, at a place in the AFZ, use a foreign boat for commercial fishing unless:

- (a) There is in force a foreign fishing licence authorising the use of the boat at that place; or
- (b) If the boat is a Treaty boat—a Treaty licence is in force in respect of the boat authorising the use of the boat at that place.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 2,500 penalty units.

(2A) Strict liability applies to subsection (2).

(3) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.

(4) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.

40. A penalty unit is defined in section 4AA of the Australian Crimes Act of 1914 as meaning AU\$ 110.

41. The three members of the crew were admitted to bail by order of 6 March 2002 on condition that they deposit AU\$ 75,000 cash each; that they reside at a place approved by the Supervising Fisheries Officer with the Australian Fisheries Management Authority (“AFMA”); that they surrender all passports and seaman’s papers to AFMA; and that they not leave the metropolitan area of Perth, Western Australia. As the other members of the *Volga*’s crew were not charged with any offences, the owner’s representatives arranged for the repatriation of the remaining crew members of the *Volga* to their respective countries of origin.

42. The owner of the *Volga* posted bail in the total amount of AU\$ 225,000 into court for the three members of the crew on or about 23 March 2002. Prior to this date, on 16 March 2002, the Master of the *Volga* died in an Australian hospital. He was not charged with any offences prior to his death.

43. On 30 May 2002, the three members of the crew obtained a variation of the bail conditions so as to enable them to return to Spain, under certain conditions, pending the hearing of the criminal charges brought against them.

44. On 14 June 2002, the Supreme Court of Western Australia (Wheeler J.), on appeal by the Commonwealth Director of Public Prosecutions, ordered a variation of the bail imposed on 30 May 2002, so as to require, in lieu of the existing AU\$ 75,000, a deposit of AU\$ 275,000 in respect of each of the three members of the crew. An appeal was lodged against this decision.

45. On 23 August 2002, a further charge was laid against the fishing master under section 100 of the Fisheries Management Act and further bail of AU\$ 20,000 was set by the Court of Petty Sessions in respect of this charge. On 27 August 2002 the owner paid this additional amount.

46. After the Tribunal began its deliberations in the present case, it was informed by the Agent of Australia by letter dated 17 December 2002 that, on 16 December 2002, the Full Court of the Supreme Court of Western Australia had upheld the appeal of the three members of the crew of the *Volga* from the decision of Wheeler J. in relation to their bail conditions. The Full Court ordered that the three members of the crew be permitted to leave Australia and return to Spain subject to the following conditions of bail:

1. Each of the Appellants be granted bail on the condition that they deposit cash by way of a bail deposit in the following amounts:

- (1) MANUEL PÉREZ LIJO, \$95,000.00; and
- (2) JOSÉ MANUEL LOJO EIROA and JUAN MANUEL GONZÁLEZ FOLGAR, \$75,000.00 each.

2. Within 21 days from the date of these Orders each of the Appellants surrender to the Australian Embassy in Madrid:

- (1) Their passport; and
- (2) Seaman's papers (to include any licence or qualification).

3. Each Appellant upon return to Spain to report within 21 days to the Australian Embassy in Madrid and thereafter to report monthly to the Australian Embassy in Madrid or a consular official nominated by the Australian Embassy in Madrid.

4. Upon any default in respect of condition 2 or 3 herein any Appellant in default will forfeit his bail deposit.

5. Each Appellant to enter into a bail undertaking in the form annexed hereto.

6. The passports and seaman's papers currently held by the Australian Fishing Management Authority to be returned to the Appellants within 24 hours of each Appellant executing their bail undertaking as annexed hereto to allow each Appellant to travel to Spain.

47. The Registrar, upon instructions of the President, informed the parties on 17 December 2002 that the Tribunal was ready to receive, not later than 18 December 2002, observations or further comments which they might wish to provide regarding this communication. Both parties transmitted communications by 18 December 2002.

48. In his communication, the Agent of the Russian Federation made the following observation:

The decision of the Court attaches conditions to release the crew not envisaged by article 73(2) of UNCLOS and thus in our view is not permissible or reasonable in terms of the Convention.

In the circumstances, the Russian Federation maintains its submission that Australia has set an unreasonable bond for the release of the vessel and crew and maintains its application for release of the vessel and crew in full.

49. Upon instructions of the Tribunal, the Registrar requested on 18 December 2002 the Agent of Australia to provide further information concerning the current status of the three members of the crew. The Agent of Australia informed the Tribunal by facsimile of 19 December 2002 of the following:

On 17 December 2002, the crew members each signed a bail undertaking on the terms set down by the Full Court of the Supreme Court of Western Australia on the same date. [...]

On 18 December 2002, an officer of the Australian Fisheries Management Authority returned the passports and seaman's papers of the crew members to their solicitor. The solicitor advised the officer that the crew members were scheduled to depart Australia on 20 December 2002. On 19 December 2002, counsel for the crew members confirmed this advice in the course of proceedings before the Federal Court of Australia.

Copies of the bail undertakings signed by the crew members were attached to that communication. A further communication from the Agent of Australia was received on 21 December 2002, which confirmed "that the three crew members, Messrs. Lijo, Eiroa and Folgar, departed by air from Perth, Australia at 4.00 pm on 20 December 2002 (Perth time) bound for Madrid via Singapore". Copies of both communications were sent forthwith to the Agent of the Russian Federation.

50. Section 106A of the Fisheries Management Act 1991 provides:

Forfeiture of things used in certain offences

The following things are forfeited to the Commonwealth:

- (a) A foreign boat used in an offence against:
 - (i) Subsection 95(2); or
 - (ii) Section 99; or
 - (iii) Section 100; or
 - (iv) Section 100A; or
 - (v) Section 101; or
 - (vi) Section 101A;
- (b) A boat used in an offence against *section 101B* as a support boat (as defined in that section);
- (c) A net or trap, or equipment, that:
 - (i) Was on a boat described in paragraph (a) or (b) at the time of the offence mentioned in that paragraph; or
 - (ii) Was used in the commission of an offence against *subsection 95(2)* or *section 99, 100, 100A, 101, 101A* or *101B*;
- (d) Fish:
 - (i) On a boat described in paragraph (a) or (b) at the time of the offence mentioned in that paragraph; or
 - (ii) Involved in the commission of an offence against *subsection 95(2)* or *section 99, 100, 100A, 101, 101A* or *101B*.

51. On 20 May 2002, pursuant to the provisions of the Fisheries Management Act 1991, the catch found on board the *Volga* was sold by the Australian authorities for AU\$ 1,932,579.28. According to the Respondent, the catch consisted of 131.422 tonnes of Patagonian toothfish (*Dissostichus eleginoides*) and 21.494 tonnes of bait. The proceeds of the sale of the catch are being held in trust by the Australian Government Solicitor pending the outcome of the legal proceedings in the Australian courts.

52. On 21 May 2002, the owner of the *Volga* instituted proceedings in the Federal Court of Australia to prevent the forfeiture of the vessel, fish, nets and equipment under the Fisheries Management Act 1991. These proceedings are pending.

53. Following a request by counsel for the owner as to what conditions AFMA would seek to impose upon a release of the *Volga*, AFMA, in a letter dated 26 July 2002, responded as follows:

AFMA has considered the matter and would require a security to be lodged amounting to AU\$ 3,332,500 for release of the vessel. The security amount is based on what Australia considers reasonable in respect of three elements:

- Assessed value of the vessel, fuel, lubricants and fishing equipment
- Potential fines
- Carriage of a fully operational VMS [Vessel Monitoring System] and observance of CCAMLR (Commission for the Conservation of Antarctic Marine Living Resources) conservation measures until the conclusion of legal proceedings.

[...]

Accordingly, I ask you to provide the information outlined below in a format that can be independently verified:

- The ultimate beneficial owners of the vessel, including the name(s) of the parent company (or companies) to Olbers;
- The names and nationalities of the Directors of Olbers and of the parent company (or companies);
- The name, nationality and location of the manager(s) of the vessel's operations;
- The insurers of the vessel; and
- The financiers, if any, of the vessel.

54. By facsimile of 26 August 2002, counsel for the owner communicated to AFMA the following:

AFMA seeks AU\$ 3,332,500 by way of security for release of the vessel and sets other conditions of release. Our client is not prepared

to bond the vessel in the amount sought by AFMA nor does it agree that the extra conditions that AFMA seeks to attach to the release are reasonable.

[...]

In the circumstances, our client would agree to bond the vessel for AU\$ 500,000 by way of a bank deposit or unconditional guarantee.

Jurisdiction and admissibility

55. The Tribunal will, at the outset, examine the question whether it has jurisdiction to entertain the Application and whether the Application is admissible. Article 292 of the Convention reads as follows:

Article 292

Prompt release of vessels and crews

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

56. As far as jurisdiction is concerned, the Tribunal notes that the Respondent does not contest the jurisdiction of the Tribunal. The Russian Federation and Australia are both States Parties to the Convention. The Russian Federation ratified the Convention on 12 March 1997 and the Convention entered into force for the Russian Federation on 11 April 1997. Australia ratified the Convention on 5 October 1994 and the Convention

entered into force for Australia on 16 November 1994. The status of the Russian Federation as the flag State of the *Volga* is not disputed. The parties did not agree to submit the question of release from detention to any other court or tribunal within 10 days of the time of detention. The Application has been duly made by the Russian Federation in accordance with article 292, paragraph 2, of the Convention. The Application satisfies the requirements of articles 110 and 111 of the Rules.

57. For the above reasons, the Tribunal finds that it has jurisdiction to adjudicate on the case.

58. As regards admissibility, the Applicant alleges that the Respondent has not complied with the provisions of article 73, paragraph 2, of the Convention for the prompt release of a vessel and its crew because the bond set by the Respondent is in all circumstances unreasonable. The Respondent challenges the allegation of non-compliance with the provisions of article 73, paragraph 2, of the Convention and contends that the bond set by it for the release of the ship and its crew is reasonable. However, the Respondent concedes that the Application is admissible under article 292 of the Convention.

59. The allegation of the Applicant is that the Respondent has not complied with article 73, paragraph 2, of the Convention. This is one of the provisions of the Convention “for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security” to which article 292, paragraph 1, refers. The Tribunal therefore finds that the Application is admissible.

Non-compliance with article 73, paragraph 2, of the Convention

60. The Applicant alleges that the Respondent has not complied with article 73, paragraph 2, of the Convention concerning the prompt release of the three members of the crew and vessel, upon the posting of a reasonable bond or security. In support of the allegation it submits that the Respondent has set conditions for the release of the vessel and three members of the crew which are not permissible under article 73, paragraph 2, or are unreasonable in terms of article 73, paragraph 2, of the Convention.

61. The Respondent maintains that the bond it has set for the release of the *Volga* is reasonable, having regard to the value of the *Volga*, its fuel, lubricants and fishing equipment; the gravity of the offences and potential penalties; the level of international concern over illegal fishing; and the need to secure compliance with Australian laws and international obligations pending the completion of domestic proceedings. The Respondent also contends that the bond set by Australia for the release of the crew members is reasonable.

62. When the Tribunal is called upon, under article 292 of the Convention, to assess whether the bond set by a party is reasonable, it must

apply the Convention and other rules of international law not incompatible with the Convention.

63. In its previous judgments, the Tribunal indicated some of the factors that should be taken into account in assessing a reasonable bond for the release of a vessel or its crew under article 292 of the Convention. In the “*Camouco*” Case, the Tribunal indicated factors relevant in an assessment of the reasonableness of bonds or other financial security, as follows:

The Tribunal considers that a number of factors are relevant in an assessment of the reasonableness of bonds or other financial security. They include the gravity of the alleged offences, the penalties imposed or imposable under the laws of the detaining State, the value of the detained vessel and of the cargo seized, the amount of the bond imposed by the detaining State and its form.

(Judgment of 7 February 2000, paragraph 67)

64. In the “*Monte Confurco*” Case, the Tribunal confirmed this statement and added that “[t]his is by no means a complete list of factors. Nor does the Tribunal intend to lay down rigid rules as to the exact weight to be attached to each of them” (Judgment of 18 December 2000, paragraph 76).

65. The Tribunal is required to determine whether or not the bond set by the Respondent is reasonable in terms of the Convention. As held in the “*Monte Confurco*” Case:

[T]he object of article 292 of the Convention is to reconcile the interest of the flag State to have its vessel and its crew released promptly with the interest of the detaining State to secure appearance in its court of the Master and the payment of penalties.

The balance of interests emerging from articles 73 and 292 of the Convention provides the guiding criterion for the Tribunal in its assessment of the reasonableness of the bond. [...]

(Judgment of 18 December 2000, paragraphs 71 and 72)

In assessing the reasonableness of the bond or other security, due account must be taken of the terms of the bond or security set by the detaining State, having regard to all the circumstances of the particular case.

66. The Tribunal will now deal with the application of the various factors in the present case.

67. Turning first to the gravity of the offences alleged to have been committed in the present case, it is noted that the offences relate to the conservation of the fishery resources in the exclusive economic zone. The Respondent has submitted that the potential penalties under Australian law indicate the grave nature of the offence and support its contention that the bond set for the release of the vessel and members of its crew is reasonable. The Respondent has pointed out that continuing illegal

fishing in the area covered by the Convention for the Conservation of Antarctic Marine Living Resources (“CCAMLR”) has resulted in a serious depletion of the stocks of Patagonian toothfish and is a matter of international concern. It has invited the Tribunal to take into account “the serious problem of continuing illegal fishing in the Southern Ocean” and the dangers this poses to the conservation of fisheries resources and the maintenance of the ecological balance of the environment. According to the Respondent, this problem and the international concern that it raises provide ample justification for the measures it has taken, including the penalties provided in its legislation and the high level of bond that it has set for the release of ships and their crews when charged with violation of its laws.

68. The Tribunal takes note of the submissions of the Respondent. The Tribunal understands the international concerns about illegal, unregulated and unreported fishing and appreciates the objectives behind the measures taken by States, including the States Parties to CCAMLR, to deal with the problem.

69. The Tribunal must, however, emphasize that, in the present proceedings, it is called upon to assess whether the bond set by the Respondent is reasonable in terms of article 292 of the Convention. The purpose of the procedure provided for in article 292 of the Convention is to secure the prompt release of the vessel and crew upon the posting of a reasonable bond, pending completion of the judicial procedures before the courts of the detaining State. Among the factors to be considered in making the assessment are the penalties that may be imposed for the alleged offences under the laws of the Respondent. It is by reference to these penalties that the Tribunal may evaluate the gravity of the alleged offences. The Respondent has pointed out that the penalties provided for under its law in respect of the offences with which the members of the crew are charged indicate that these offences are grave. The Applicant does not deny that the alleged offences are considered to be grave under Australian law.

70. According to the laws of Australia, the maximum total of fines imposable on the three officers of the *Volga* is AU\$ 1,100,000 and the vessel, its equipment and fish on board are liable to forfeiture.

71. There is no dispute between the parties as to the value of the vessel and its cargo. The vessel has been valued in the amount of US\$ 1 million (approximately AU\$ 1.8 million) and the value of fuel, lubricants and equipment amounts to AU\$ 147,460. The catch and bait on board were sold by the Australian authorities for AU\$ 1,932,579.28.

72. The bond sought by the Respondent is for AU\$ 3,332,500. This consists of three components, namely:

- A security to cover the assessed value of the vessel, fuel, lubricants and fishing equipment (AU\$ 1,920,000);

- An amount (AU\$ 412,500) to secure payment of potential fines imposed in the criminal proceedings that are still pending against members of the crew;
- A security (AU\$ 1,000,000) related to the carriage of a fully operation VMS and observance of CCAMLR conservation measures.

73. In the view of the Tribunal, the amount of AU\$ 1,920,000 sought by the Respondent for the release of the vessel, which represents the full value of the vessel, fuel, lubricants and fishing equipment and is not in dispute between the parties, is reasonable in terms of article 292 of the Convention.

74. Following the upholding of the appeal of the three members of the crew by the Supreme Court of Western Australia and their departure from Australia, the Tribunal considers that setting a bond in respect of the three members of the crew would serve no practical purpose. The Tribunal has noted the comments of the Applicant regarding the bail conditions set by the Supreme Court of Western Australia for permitting the three members of the crew to leave Australia. The Tribunal does not consider it necessary, in the present circumstances, to deal with the issues raised by the Applicant.

75. Besides requiring a bond, the Respondent has made the release of the vessel conditional upon the fulfilment of two conditions: that the vessel carry a VMS, and that information concerning particulars about the owner and ultimate beneficial owners of the ship be submitted to its authorities. The Respondent contends that the carrying of the VMS is necessary in order to prevent further illicit fishing once the ship is released. It further states that because the payment of a bond is a significant transaction it is entitled to know with whom the arrangements are to be made. The Applicant argues that such conditions find no basis in article 73, paragraph 2, and in the Convention in general, because only conditions that relate to the provision of a bond or security in the pecuniary sense can be imposed.

76. In the view of the Tribunal, it is not appropriate in the present proceedings to consider whether a coastal State is entitled to impose such conditions in the exercise of its sovereign rights under the Convention. In these proceedings, the question to be decided is whether the “bond or other security” mentioned in article 73, paragraph 2, of the Convention may include such conditions.

77. In interpreting the expression “bond or other security” set out in article 73, paragraph 2, of the Convention, the Tribunal considers that this expression must be seen in its context and in light of its object and purpose. The relevant context includes the provisions of the Convention concerning the prompt release of vessels and crews upon the posting of a bond or security. These provisions are: article 292; article 220, paragraph 7; and article 226, paragraph 1 (b). They use the expressions “bond or other financial security” and “bonding or other appropriate financial security”. Seen in

this context, the expression “bond or other security” in article 73, paragraph 2, should, in the view of the Tribunal, be interpreted as referring to a bond or security of a financial nature. The Tribunal also observes, in this context, that where the Convention envisages the imposition of conditions additional to a bond or other financial security, it expressly states so. Thus article 226, paragraph 1 (c), of the Convention provides that “the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard”. It follows from the above that the non-financial conditions cannot be considered components of a bond or other financial security for the purpose of applying article 292 of the Convention in respect of an alleged violation of article 73, paragraph 2, of the Convention. The object and purpose of article 73, paragraph 2, read in conjunction with article 292 of the Convention, is to provide the flag State with a mechanism for obtaining the prompt release of a vessel and crew arrested for alleged fisheries violations by posting a security of a financial nature whose reasonableness can be assessed in financial terms. The inclusion of additional non-financial conditions in such a security would defeat this object and purpose.

78. The Respondent has required, as part of the security for obtaining the release of the *Volga* and its crew, payment by the owner of one million Australian dollars. According to the Respondent, the purpose of this amount is to guarantee the carriage of a fully operational monitoring system and observance of Commission for the Conservation of Antarctic Marine Living Resources conservation measures until the conclusion of legal proceedings. The Respondent explained that this component of the bond was to ensure “that the *Volga* complies with Australian law and relevant treaties to which Australia is a party until the completion of the domestic legal proceedings”; that the ship does not “enter Australian territorial waters other than with permission or for the purpose of innocent passage prior to the conclusion of the forfeiture proceedings”; and further to ensure that the vessel “will not be used to commit further criminal offences”.

79. The Tribunal cannot, in the framework of proceedings under article 292 of the Convention, take a position as to whether the imposition of a condition such as what the Respondent referred to as a “good behaviour bond” is a legitimate exercise of the coastal State’s sovereign rights in its exclusive economic zone. The point to be determined is whether a “good behaviour bond” is a bond or security within the meaning of these terms in articles 73, paragraph 2, and 292 of the Convention.

80. The Tribunal notes that article 73, paragraph 2, of the Convention concerns a bond or a security for the release of an “arrested” vessel which is alleged to have violated the laws of the detaining State. A perusal of article 73 as a whole indicates that it envisages enforcement measures in respect of violations of the coastal State’s laws and regulations alleged to have been committed. In the view of the Tribunal, a “good behaviour

bond” to prevent future violations of the laws of a coastal State cannot be considered as a bond or security within the meaning of article 73, paragraph 2, of the Convention read in conjunction with article 292 of the Convention.

81. The Applicant submits that, in assessing the reasonableness of any bond, the Tribunal should take into account the circumstances of the seizure of the vessel on the high seas, although it made it clear that it did not invite the Tribunal to consider the merits of the case.

82. The Respondent contends that this is not a matter for consideration by the Tribunal because, in its view, the Applicant is “clearly inviting the Tribunal to pre-judge the merits of any proceedings threatened by the Applicant in relation to the seizure of the *Volga*”.

83. In the view of the Tribunal, matters relating to the circumstances of the seizure of the *Volga* as described in paragraphs 32 to 33 are not relevant to the present proceedings for prompt release under article 292 of the Convention. The Tribunal therefore cannot take into account the circumstances of the seizure of the *Volga* in assessing the reasonableness of the bond.

84. The fish and bait that were on board the *Volga* at the time of its arrest have been sold by the Australian authorities. According to the Respondent, the proceeds are being held in trust, pending the final outcome of the proceedings against the members of the crew. The Applicant has invited the Tribunal to treat the proceeds of the sale of the catch as security given by the owner for the release of the vessel and its crew. The Respondent, however, contends that neither the fish nor the proceeds of their sale should be treated as security given by the owner, since the fish are subject to forfeiture under the laws of Australia.

85. Under the laws of Australia the fish on board the *Volga* are subject to confiscation, if the domestic courts find that they were illegally caught within the EEZ of the Respondent. However, the Respondent may be obliged to return the proceeds of the sale to the owner of the ship if the domestic courts conclude that the fish were not caught within the EEZ of Australia. In effect, the catch and the vessel, the fuel, lubricants and the equipment on board, all form part of the guarantee that the Respondent needs to ensure that the final decisions of the domestic courts can be fully enforced. However, a bond or other financial security for the purposes of article 292 of the Convention is needed only to ensure full protection of Australia’s potential right in the vessel and possible fines against the members of the crew. No such bond is necessary in respect of the catch since Australia holds the proceeds of the sale.

86. Although the proceeds of the sale of the catch represent a guarantee to the Respondent, they have no relevance to the bond to be set for the release of the vessel and the members of the crew. Accordingly, the question of their inclusion or exclusion from the bond does not arise in this case.

87. The Tribunal must, however, emphasize that the proceeds of the sale of the catch are included in the overall amount that will be retained by the Respondent or returned to the Applicant, as the case may be, depending on the final decisions on the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew.

88. On the basis of the above considerations, and keeping in view the overall circumstances of this case, the Tribunal considers that the bond as sought by Australia is not reasonable within the meaning of article 292 of the Convention.

89. For the above reasons, the Tribunal finds that the Application with respect to the allegation of non-compliance with article 73, paragraph 2, of the Convention is well-founded for the purposes of these proceedings and that, consequently, Australia must release promptly the *Volga* upon the posting of a bond or other financial security to be determined by the Tribunal.

Amount and form of the bond or other financial security

90. On the basis of the foregoing considerations, the Tribunal is of the view that a bond for the release of the *Volga*, the fuel, lubricants and fishing equipment should be in the amount of AU\$ 1,920,000.

91. With respect to the form of any bond or financial security that the Tribunal may order, the Applicant submits that a bank undertaking would be an appropriate form of security for the Tribunal to order in accordance with its powers to do so pursuant to article 113, paragraph 2, of the Rules.

92. The Respondent submits that an appropriate form of security would be a cash payment to be held in trust by the Australian authorities or a bank guarantee from an Australian bank.

93. The Tribunal is of the view that the bond or other security should be, unless the parties otherwise agree, in the form of a bank guarantee from a bank present in Australia or having corresponding arrangements with an Australian bank.

Costs

94. The rule in respect of costs in proceedings before the Tribunal, as set out in article 34 of its Statute, is that each party shall bear its own costs, unless the Tribunal decides otherwise. In the present case, the Tribunal sees no need to depart from the general rule that each party shall bear its own costs.

Operative provisions

95. For these reasons,

THE TRIBUNAL,

(1) Unanimously,

Finds that the Tribunal has jurisdiction under article 292 of the Convention to entertain the Application made by the Russian Federation on 2 December 2002.

(2) Unanimously,

Finds that the Application with respect to the allegation of non-compliance with article 73, paragraph 2, of the Convention is admissible.

(3) By 19 votes to 2,

Finds that the allegation made by the Applicant that the Respondent has not complied with the provisions of the Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security is well-founded;

FOR: *President* NELSON; *Vice-President* VUKAS; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, MARSIT, NDIAYE, JESUS, BALLAH, COT;

AGAINST: *Judge* ANDERSON; *Judge ad hoc* SHEARER.

(4) By 19 votes to 2,

Decides that Australia shall promptly release the *Volga* upon the posting of a bond or other security to be determined by the Tribunal;

FOR: *President* NELSON; *Vice-President* VUKAS; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, MARSIT, NDIAYE, JESUS, BALLAH, COT;

AGAINST: *Judge* ANDERSON; *Judge ad hoc* SHEARER.

(5) By 19 votes to 2,

Determines that the bond or other security shall be AU\$ 1,920,000, to be posted with Australia;

FOR: *President* NELSON; *Vice-President* VUKAS; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, MARSIT, NDIAYE, JESUS, BALLAH, COT;

AGAINST: *Judge* ANDERSON; *Judge ad hoc* SHEARER.

(6) Unanimously,

Determines that the bond shall be in the form of a bank guarantee from a bank present in Australia or having corresponding arrangements with an Australian bank or, if agreed to by the parties, in any other form.

(7) Unanimously,

Decides that each party shall bear its own costs.

Done in English and in French, both texts being authoritative, in the Free and Hanseatic City of Hamburg, this twenty-third day of December, two thousand and two, in three copies, one of which will be placed in the

archives of the Tribunal and the others transmitted to the Government of the Russian Federation and the Government of Australia, respectively.

(Signed) L. Dolliver M. NELSON,
President.

(Signed) Philippe GAUTIER,
Registrar.

Vice-President VUKAS, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(Initialled) B. V.

Judge MARSIT, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(Initialled) M. M. M.

Judge COT, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialled) J.-P. C.

Judge ANDERSON, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his dissenting opinion to the Judgment of the Tribunal.

(Initialled) D. H. A.

Judge ad hoc SHEARER, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his dissenting opinion to the Judgment of the Tribunal.

(Initialled) I. S.

Chapter VIII
DECISIONS OF NATIONAL TRIBUNALS

The Netherlands

THE HAGUE DISTRICT COURT

Plaintiff's complaint that 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 has denied him unhindered and confidential communications with his lawyers representing him before the European Court of Human Rights

CIVIL LAW SECTOR—JUDGE HEARING APPLICATIONS FOR PROVISIONAL RELIEF

Judgement in interim injunction proceedings of 26 February 2002,
Given in case number KG 02/105 of:

SLOBODAN MILOŠEVIĆ

Domiciled in Belgrade, Federal Republic of Yugoslavia
Currently residing in Scheveningen in the municipality of The Hague,
Plaintiff,

Procurator litis A. B. B. Beelaard,
Advocates E. Olof and N. M. P. Steijnen, of Zeist

v.

1. 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

With its seat in The Hague,
represented at law by the Registrar of the court,
no appearance entered;

2. THE STATE OF THE NETHERLANDS (THE MINISTER OF JUSTICE AND THE PRESIDENT OF THE HAGUE DISTRICT COURT) with its seat in The Hague, procurator litis Cécile M. Bitter, defendants.

The defendants shall hereafter also be referred to separately as the Tribunal and the State.

On the basis of the documents and the oral proceedings of 12 February 2002, the following facts will be deemed to have been established in this case:

(a) By resolution 827 of 25 May 1993 (Netherlands Treaty Series 1993, 168; “Resolution 827”), the United Nations Security Council, “acting under Chapter VII of the Charter of the United Nations” (“the Charter”), decided to establish an international tribunal “for the sole purpose of the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991”. The annex to the resolution includes the Statute (Statute of the International Tribunal; “the Statute”) of the aforementioned tribunal (“the Tribunal”). Article 31 of the Statute provides that the Tribunal shall have its seat in The Hague.

(b) Article 9, paragraph 2, of the Statute reads as follows:

“The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.”

Article 29, paragraph 1, of the Statute includes the following sentence:

“States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.”

Article 30, paragraphs 1 and 2, of the Statute reads as follows:

“1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (“the Immunities Convention”) shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.

“2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.”

(c) Article II, section 2, of the Immunities Convention states as follows:

“*Section 2.* The United Nations, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every

form of legal process except insofar as in a particular case it has expressly waived its immunity. ...”

(d) The relationship between the Netherlands—as host country—and the Tribunal is laid down in the Agreement of 29 July 1994 between the Netherlands and the United Nations (Netherlands Treaty Series 1994, 189), also referred to as “the Headquarters Agreement”. This Agreement also provides for the practical implementation of certain of the Statute’s provisions. The Netherlands implemented resolution 827 and the Statute by Act of Parliament of 21 April 1994 (Bulletin of Acts and Decrees 1994, 308; “the Implementation Act”). Section 17 of the Implementation Act reads as follows:

“Dutch law shall not apply with respect to deprivation of liberty imposed on the orders of the Tribunal within facilities available to the Tribunal in the Netherlands.”

(e) Article VIII of the Headquarters Agreement stipulates as follows:

“The Tribunal, its funds and assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Tribunal has expressly waived its immunity”

(f) The plaintiff is the former President of the Federal Republic of Yugoslavia.

(g) After the plaintiff’s detention in Belgrade on 1 April 2001 to answer criminal charges, he was transferred to the Tribunal on 29 June 2001 in compliance with the arrest warrant issued by the Tribunal on 22 January 2001. He was taken to the United Nations detention unit (“the detention unit”), a section of Scheveningen prison complex reserved exclusively for the detention of persons being prosecuted before the Tribunal, where he has been held in pre-trial detention since.

(h) The regime applicable to detainees held in the detention unit is laid down in the “Rules governing the detention of persons awaiting trial or appeal before the Tribunal or otherwise detained on the authority of the Tribunal (‘the detention rules’)”. Rule 67 provides as follows:

“Each detainee shall be entitled to communicate fully and without restraint with his defence counsel, with the assistance of an interpreter where necessary.

“... .

“All such correspondence and communication shall be privileged.

“... .

“(D) Interviews with legal counsel and interpreters shall be conducted in the sight but not within the hearing, either direct or indirect, of the staff of the detention unit.”

(i) Rules 84 to 88 of the detention rules embody a complaints procedure for detainees held in the detention unit. This procedure is described in further detail in the “Regulations for the establishment of a complaints procedure for detainees (IT/96), issued by the Registrar, April 1995”.

(j) By summons of 14 August 2001, the plaintiff asked the court to order the State (the Ministries of General Affairs and Foreign Affairs) to release him unconditionally (principal claim).

(k) By judgement of 31 August 2001, the President of this court declared that he was not competent to take cognizance of the plaintiff’s claim.

(l) The appeal lodged against this judgement by the plaintiff with The Hague Court of Appeal was removed from the case list at the plaintiff’s request (case list of 17 January 2002).

(m) On 20 December 2001, Mr. Steijnen lodged an application on behalf of the plaintiff with the European Court of Human Rights.

(n) By summons of 25 January 2002, the plaintiff summonsed the Tribunal and others to appear at a sitting hearing interim injunction proceedings on 11 February 2002. By letter of 5 February 2002, the Registrar, on behalf of the Tribunal, stated that the Tribunal would not enter an appearance on 11 February 2002, invoking the Tribunal’s immunity under article VIII of the Headquarters Agreement.

Leave to proceed

Article 105, paragraph 1, of the Charter states that the United Nations shall enjoy in the territory of each of its Members such immunities and privileges as are necessary for the fulfilment of its aims. Article 30, paragraph 1, of the Statute, which forms part of resolution 827, and article IV of the Headquarters Agreement declare the Immunities Convention to be applicable to the Tribunal. Article II of the Immunities Convention and article VIII of the Headquarters Agreement provide that “The United Nations (The Tribunal) ... shall enjoy immunity from every form of legal process, except insofar as in any particular case it [the United Nations/the Tribunal] has expressly waived its immunity”. It follows from this that the Tribunal may invoke its immunity, since it has not waived this immunity in the present case. The plaintiff’s submission that immunity relates only to the Tribunal’s property is incorrect. The only possible conclusion to be drawn from the list in article II of the Immunities Convention and article VIII of the Headquarters Agreement is that the Tribunal itself and its “funds, assets and other property” enjoy immunity in respect of any legal proceedings whatsoever. This stands in the way of granting leave to proceed in the absence of the Tribunal.

The claims, the grounds on which they are based and the defence

The plaintiff has asked the court—in essence—to make the following orders:

Principally: to order the defendants to enter into consultations with him within 48 hours of the service of this judgement in order to find a solution which will end the Tribunal's violation of his right to correspond with, and consult out of the hearing of other persons, his lawyers in connection with the application he has submitted to the European Court of Human Rights;

Or: to order the defendant named under 2. to urge the Tribunal to enter into consultations within 48 hours of the service of this judgement in order to find a solution which will end the Tribunal's violation of his right to correspond with, and consult out of the hearing of other persons, his lawyers in connection with the application he has submitted to the European Court.

The plaintiff made the following further submissions.

The Tribunal is denying the plaintiff the right to unhindered and confidential communication with his lawyers, including Mr. Steijnen, in the context of proceedings instituted by the plaintiff before the European Court. In so doing, the Tribunal is acting in breach of article 6, paragraph 3 (b) and (c), of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention on Human Rights") and of article 14, paragraph 3 (b), of the International Covenant on Civil and Political Rights. In addition, it is acting in breach of article 21, paragraph 4, of the Statute. It is part of the task of the Dutch courts to examine whether the Tribunal is observing its own regulations concerning the protection of the rights of the accused. For it follows from article 1 of the Convention on Human Rights and article VI, paragraph 2, of the Headquarters Agreement that Dutch jurisdiction is to be maintained in full and that the State of the Netherlands is responsible for protecting human rights within its territory. Furthermore, it follows from article 13 of the Convention on Human Rights that the Dutch courts have a duty to make every effort to prevent the violation of human rights by the Tribunal. The Tribunal cannot take over this duty from the State.

The State presented its defence, furnished with arguments. Where necessary this defence will be discussed below.

The assessment of the dispute

First, the Netherlands has expressly transferred to the Tribunal its competence to take cognizance of claims relating to the deprivation of liberty on the Tribunal's orders within the facilities made available to the Tribunal in the Netherlands, and Dutch law is not applicable in such matters. This follows from articles VI and XX of the Headquarters Agreement, and from section 17 of the Implementation Act. Furthermore, article 9, paragraph 2, of the Statute states that in terms of jurisdiction, the Tribunal has primacy over national courts with regard to the administration of justice. Moreover, article 29, paragraph 1, of the Statute obliges States to cooperate with the Tribunal in the prosecution of accused persons, like the plaintiff in the present case. Finally, it follows from Article 103 of the Charter that regulations made pursuant to the Charter, and therefore those laid down

by the Security Council, take precedence over all other regulations. These provisions mean that the State of the Netherlands has nothing to do with the plaintiff's being deprived of his liberty by the Tribunal. The same applies to the Dutch courts in general, and therefore to the President of The Hague District Court, since the Dutch courts are bound by the above-mentioned regulations. This leads to the conclusion that the Dutch courts are not competent to take cognizance of the plaintiff's claims.

For the record, the court also held as follows. Rules 84 to 88 of the detention rules prescribe a detailed internal complaints procedure. No submission has been made or evidence produced that the plaintiff has submitted a complaint pursuant to this procedure regarding the Tribunal's denial of his right to free communication with his counsel as provided for in rule 67. It is clear from article 7 of the Regulations that such a complaint would be admissible. The plaintiff's contention that the internal complaints procedure is solely concerned with complaints relating to the conditions of detention is incorrect. The plaintiff therefore still has the opportunity to submit a complaint on the basis of the internal complaints procedure which is open to him. In addition, the State advocate has informed the court at this sitting that the Registrar of the Tribunal has given assurances that Mr. Steijnen will not be denied access to the plaintiff in his capacity as the plaintiff's counsel in the application before the European Court, and that he will be allowed to communicate with the plaintiff on a confidential basis.

It follows from the above that the President is not competent to take cognizance of the plaintiff's claim, so that the orders requested must be denied. As the court finds against the plaintiff, the latter will be ordered to pay the costs of these proceedings.

Decision

The President:

Refuses to grant leave to proceed in the absence of the defendant named under 1.;

Refuses to grant the orders requested against the defendant named under 2.;

Orders the plaintiff to pay the costs of these proceedings, amounting thus far to € 896.36 for the defendants, € 193 of which is for court fees.

Judgement given by R. C. Gisolf and pronounced at a public hearing on 26 February 2002 in the presence of the clerk of the court.

AH

[two signatures]

Part Four
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