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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*. The present volume, which is the fiftieth of the series, has been prepared by the Codification Division of the Office of Legal Affairs.

Chapters I and II contain selected legislative texts and treaties, or provisions thereof, concerning the legal status of the United Nations and related intergovernmental organizations.

Chapter III contains a general review of the legal activities of the United Nations and related intergovernmental organizations, based on information provided by each organization.

Chapter IV contains selected 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 in view of the sometimes considerable time lag between the conclusion of the treaties and their entry into force.

Chapter V contains selected decisions of administrative tribunals of the United Nations and related intergovernmental organizations.

Chapter VI reproduces selected legal opinions of the United Nations and related intergovernmental organizations.

Chapter VII includes a list of judgments, advisory opinions and selected decisions rendered by international tribunals in 2012.

Chapter VIII contains decisions given in 2012 by national tribunals relating to the legal status of the various organizations.

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 relating to the work of the United Nations and related intergovernmental organizations.

Several documents published in the *Juridical Yearbook* were supplied by the organizations or Governments concerned at the request of the Secretariat. Treaty provisions, legislative texts and judicial decisions may have been subject to minor editing by the Secretariat.

ABBREVIATIONS

ACPWP	Advisory Committee on Paper and Wood Products (FAO)
ADB	Asian Development Bank
AFISMA	African-led International Support Mission in Mali
AMISOM	African Union Mission in Somalia
APFIC	Asia-Pacific Fishery Commission
AU	African Union
BINUCA	United Nations Integrated Peacebuilding Office in the Central African Republic
BNUB	United Nations Office in Burundi
BONUCA	United Nations Peacebuilding Office in the Central African Republic
CAEMC	Central African Economic and Monetary Community
CAF	Latin American Development Bank
CCLM	Committee on Constitutional and Legal Matters (FAO)
CCPCJ	Commission on Crime Prevention and Criminal Justice (United Nations)
CEART	Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (ILO/UNESCO)
CIIC	Centre for International Industrial Cooperation
CLCS	Commission on the Limits of the Continental Shelf
CMI	Comité Maritime International
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
CTC	Counter-Terrorism Committee (Security Council)
CTED	Counter-Terrorism Committee Executive Directorate (United Nations)
CTITF	Counter-Terrorism Implementation Task Force
DESA	Department of Economic and Social Affairs (United Nations)
DFS	Department of Field Support (United Nations)
DPA	Department of Political Affairs (United Nations)
DPI	Department of Public Information (United Nations)
DPKO	Department of Peacekeeping Operations (United Nations)
EAC	East African Community
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECCAS	Economic Community of Central African States

ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOWAS	Economic Community of West African States
EPO	European Patent Office
ESCAP	Economic and Social Commission for Asia and the Pacific (United Nations)
EU	European Union
EUFOR	European Union-led peacekeeping force
EU NAVFOR	European Union Naval Force Somalia
FAO	Food and Agriculture Organization of the United Nations
GEF	Global Environment Facility
GRULAC	Latin American and Caribbean Group
HRC	Human Rights Council (United Nations)
IAAC	Independent Audit Advisory Committee (United Nations)
IADC	Inter-Agency Space Debris Coordination Committee
IAEA	International Atomic Energy Agency
IANSA	International Action Network on Small Arms
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IGO	Intergovernmental organization
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IMTR	Institute for Meteorological Training and Research
INTERPOL	International Police Organization
IOM	International Organization for Migration
IPU	Inter-Parliamentary Union

ISA	International Seabed Authority
ISAF	International Security Assistance Force
ISO	International Organisation for Standardization
ITC	International Trade Centre
ITF	International Transport Workers' Federation
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
IUCN	International Union for Conservation of Nature
JAB	Joint Appeals Board (United Nations)
LDC	Least Developed Country
MINEPS	International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport
MINURCAT	United Nations Mission in the Central African Republic and Chad
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSTAH	United Nations Stabilisation Mission in Haiti
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organization
OCHA	Office for Coordination for Humanitarian Affairs (United Nations)
OCSS	Office of Central Support Services (United Nations)
ODA	Office of Disarmament Affairs (United Nations)
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights (United Nations)
OIOS	Office of Internal Oversight Services (United Nations)
OLA	Office of Legal Affairs (United Nations)
OPCW	Organisation for the Prohibition of Chemical Weapons
OPPBA	Office of Programme Planning, Budget and Accounts (United Nations)
OSLA	Office of Staff Legal Assistance (United Nations)
PCA	Permanent Court of Arbitration
SAARC	South Asian Association for Regional Cooperation
SCSL	Special Court for Sierra Leone
SLF	Subcommittee on Stability and Load Lines and on Fishing Vessels' Safety (IMO)

SOFA	Status-of-forces agreement
SRI	Seafarers' Rights International
SRSG	Special Representative of the Secretary-General (United Nations)
STL	Special Tribunal for Lebanon
UEMOA	West African Economic and Monetary Union
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNAMID	African Union/United Nations Hybrid operation in Darfur
UNAT	United Nations Appeals Tribunal
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDC	United Nations Disarmament Commission
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UNDT	United Nations Dispute Tribunal
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGCO	United Nations Global Compact Office
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNIDO	United Nations Industrial Development Organization
UNIDROIT	International Institute for the Unification of Private Law
UNIFEM	United Nations Development Fund for Women
UNIFIL	United Nations Interim Force in Lebanon
UNIOGBIS	United Nations Integrated Peacebuilding Office in Guinea-Bissau
UNIPSIL	United Nations Integrated Peacebuilding Office in Sierra Leone
UNISDR	United Nations Office for Disaster Risk Reduction
UNISFA	United Nations Interim Security Force for Abyei
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund

UN-LiREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMISS	United Nations Mission in the Republic of South Sudan
UNMIT	United Nations Integrated Mission in Timor-Leste
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOCA	United Nations Regional Office for Central Africa
UNOCI	United Nations Operation in Côte d'Ivoire
UNODA	United Nations Office for Disarmament Affairs
UNODC	United Nations Office on Drugs and Crime
UNOG	United Nations Office at Geneva
UNON	United Nations Office at Nairobi
UNOPS	United Nations Office for Project Services
UNOV	United Nations Office at Vienna
UNOWA	United Nations Office for West Africa
UNPOS	United Nations Political Office for Somalia
UNRCCA	United Nations Regional Centre for Preventive Diplomacy for Central Asia
UNRCPD	United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific
UNREC	United Nations Regional Centre for Peace and Disarmament in Africa
UNSAC	United Nations Standing Advisory Committee on Security Questions in Central Africa
UNSCO	United Nations Special Coordinator for the Middle East Peace Process
UNSCOL	United Nations Special Coordinator for Lebanon
UNSMIL	United Nations Support Mission in Libya
UNSMIS	United Nations Supervision Mission in Syria
UNSOA	United Nations Support Office for the African Union Mission in Somalia
UN-SWAP	United Nations System Wide Action Plan
UNTSO	United Nations Truce Supervision Organization
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNWTO	United Nations World Tourism Organization
UPU	Universal Postal Union

WEOG	Western European and Others Group
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WFP	World Food Programme
WTO	World Trade Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

[No legislative texts concerning the legal status of the United Nations and related intergovernmental organizations are to be reported for 2012.]

Chapter II

TREATIES CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS*

A. Treaties concerning the legal status of the United Nations

1. Status of the Convention on the Privileges and Immunities of the United Nations. Approved by the General Assembly of the United Nations on 13 February 1946**

San Marino and Switzerland acceded to the Convention on 22 February 2012 and on 25 September 2012, respectively. As at 31 December 2012, there were 159 States parties to the Convention.***

2. Agreements relating to missions, offices and meetings

(*a*) Agreement between the United Nations and the Government of the Republic of Korea regarding the establishment of the Regional Centre for Asia and the Pacific of the United Nations Commission on International Trade Law. Incheon, 10 January 2012****

The United Nations and the Government of the Republic of Korea (hereinafter referred to as the "Government") (together jointly referred to as the "Parties"):

Whereas the General Assembly of the United Nations noted, in its resolution 64/111 of 16 December 2009, the request by the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL") for its Secretariat to explore the possibility of establishing a presence in specific regions or countries with a view to facilitating the provision of technical assistance with respect to the use and adoption of UNCITRAL texts;

Whereas the Parties have agreed to cooperate in facilitating the provision of technical assistance in the Asia-Pacific region with a view to promoting the awareness, implemen-

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* In light of the large number of treaties concluded, only a selection of the relevant treaties is reproduced herein.

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

*** For the list of the States parties, see *Multilateral Treaties Deposited with the Secretary-General*, available on the website http://treaties.un.org.

**** Entered into force on 8 February 2012 by notification, in accordance with the provisions of article 20.

tation and uniform interpretation of UNCITRAL texts by establishing the UNCITRAL Regional Centre for Asia and the Pacific (hereinafter referred to as the "Regional Centre");

Whereas the United Nations, following a comprehensive consultation with its member States, decided to accept the offer from the Government to establish the Regional Centre in the Republic of Korea;

Whereas the Parties have agreed that the United Nations shall be responsible for the management of funds provided to the United Nations to meet the costs of the Regional Centre; and

Whereas the Government has agreed to grant the United Nations the necessary privileges and immunities as well as facilities for the Regional Centre to perform its functions;

Have agreed as follows:

Article 1. Establishment and location

The Regional Centre shall be established and located in the Republic of Korea.

Article 2. Objective and functions

1. The objective of the Regional Centre is to enhance international trade and development in the Asia-Pacific region by promoting certainty in international commercial transactions through the dissemination of international trade norms and standards, in particular relevant UNCITRAL texts.

2. The Regional Centre shall carry out the following functions:

(*a*) provide technical assistance to States in the region with respect to the implementation and uniform interpretation of UNCITRAL texts;

(*b*) consult closely with international and regional organizations active in the region with respect to law reform projects aimed at capacity building of States in the region;

(*c*) collect and update information on case law and enactments of UNCITRAL texts in the region;

(*d*) disseminate information about recent developments in the field of international trade law, including those of UNCITRAL;

(*e*) serve as a liaison office of UNCITRAL in the region by building professional networks and undertaking outreach activities; and

(*f*) undertake other activities mutually agreed upon by the Parties.

Article 3. Legal capacity

The United Nations, acting through the Regional Centre, shall have the capacity to:

(*a*) contract;

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

(*c*) institute legal proceedings.

Article 4. Regional Centre personnel

1. The Regional Centre shall be headed by an internationally-recruited staff (hereinafter referred to as the "Head of the Regional Centre"), and shall be comprised of other United Nations staff. The Head of the Regional Centre and all other United Nations staff of the Regional Centre are United Nations officials, irrespective of their nationalities.

2. All United Nations officials shall be recruited and appointed under the Staff Rules and Regulations of the United Nations, with the exception of persons who are recruited locally and assigned hourly rates, as noted in General Assembly Resolution 76(I) of 7 December 1946.

3. The United Nations shall provide the Government, from time to time, in writing, the list of United Nations officials and their families and any change thereto.

4. As appropriate, the United Nations may engage the services of non-staff personnel in accordance with United Nations regulations, rules, policies and procedures.

5. The level and number of United Nations officials shall be agreed upon separately by the Parties, subject to the needs of the Regional Centre and the availability of financial resources.

Article 5. Financing

The Government and its relevant authorities shall, subject to relevant and appropriate laws and regulations and the annual budget appropriation in the Republic of Korea, contribute substantially to financing the Regional Centre and its activities, as shall be separately agreed between the Parties.

Article 6. Applicability of the Convention to the Regional Centre

The Convention on the Privileges and Immunities of the United Nations of 1946 (hereinafter referred to as the "Convention"), to which the Government has been a party since 9 April 1992, without prejudice to the reservation made by the Government upon its accession thereto, shall apply to the United Nations, including the Regional Centre, its property and assets, its officials and experts on mission in the Republic of Korea.

Article 7. Premises and security

1. The premises for the Regional Centre shall be deemed to constitute premises of the United Nations as referred to in section 3 of the Convention.

2. The premises of the Regional Centre shall be used solely to further its functions. The Head of the Regional Centre may permit, in a manner compatible with the functions of the Regional Centre, the use of the premises and facilities for meetings, seminars, exhibitions and related purposes which are organized by the United Nations, including the Regional Centre, and other related organizations.

3. In case of fire or other emergency requiring prompt protective action, the consent of the Head of the Regional Centre or his/her representative to any necessary entry into the premises shall be presumed if neither of them can be reached in time.

4. The appropriate authorities of the Government shall exercise due diligence to ensure the security, protection and tranquility of the premises of the Regional Centre. They

shall also take all possible measures to ensure that the tranquility of the Regional Centre is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

5. Without prejudice to and notwithstanding the foregoing paragraph, the United Nations may make any provisions relating to its security and the security of its personnel as it deems relevant and necessary in accordance with the relevant decisions and resolutions of the United Nations.

6. Except as otherwise provided in this Agreement or in the Convention, the laws applicable in the Republic of Korea shall apply within the premises of the Regional Centre.

7. The premises of the Regional Centre shall be under the control and authority of the United Nations, which may establish regulations for the execution of its functions therein.

Article 8. Public services

1. The appropriate authorities of the Government shall exercise, to the extent requested by the Head of the Regional Centre, their respective powers to ensure that the premises of the Regional Centre are supplied with the necessary public utilities and services, including, without limitation by reasons of this enumeration, electricity, water, sewerage, gas, post, telephone, internet, drainage, collection of refuse and fire protection, and that such public utilities and services are supplied on equitable terms.

2. In case of any interruption or threatened interruption of any such services, the appropriate authorities of the Government shall consider the needs of the Regional Centre as being of equal importance with the needs of diplomatic missions and other intergovernmental organizations in the Republic of Korea, and shall take steps accordingly to ensure that the functions of the Regional Centre are not prejudiced.

3. The Head of the Regional Centre shall, upon request, make suitable arrangements to enable the appropriate public service bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the premises of the Regional Centre under conditions that shall not unreasonably disturb the functions of the Regional Centre.

Article 9. Communications and publications

1. The Regional Centre shall enjoy, in respect of its official communications, treatment no less favorable than that accorded by the Government to any diplomatic mission or other intergovernmental organizations in matters of priorities, rates and taxes on mail, cables, telegrams, telephone and other communications, including wireless transmitters, as well as rates for information to the press and radio.

2. All official communications directed to the Regional Centre, or to any of its officials, and outward official communications of the Regional Centre, by whatever form transmitted, shall be immune from censorship and from any other form of interference.

3. The United Nations, acting through the Regional Centre, shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags. The bags must bear visibly the United Nations

emblem and may contain only documents or articles intended for official use, and the courier should be provided with a courier certificate issued by the United Nations.

4. The Regional Centre may produce research reports as well as academic publications within the fields of its functions and activities. It is, however, understood that the Regional Centre shall abide by the laws of the Republic of Korea concerning intellectual property rights in the Republic of Korea and related international conventions.

Article 10. Archives

The archives of the Regional Centre shall be inviolable.

Article 11. Funds, assets and other property

1. The Regional Centre, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case the United Nations has expressly waived the immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution. It is understood that no service or execution of any legal process, including the seizure of private property, shall take place within the premises of the Regional Centre except with the express consent of and under conditions approved by the Head of the Regional Centre. Without prejudice to the preceding sentence, it is understood that, as a practical matter, the Government cannot prevent all attempts at service of process in the premises.

2. The premises of the Regional Centre shall be inviolable. The Regional Centre's property and assets, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

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

(*a*) hold funds or currency of any kind and operate accounts in convertible currencies; and

(*b*) transfer its funds or currency to and from the Republic of Korea or within the Republic of Korea and convert them into other freely convertible currency.

Article 12. Exemption from taxation

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

(*a*) exempt from all direct taxes. It is understood, however, that the Regional Centre shall not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) exempt from customs duties in respect of articles imported by the Regional Centre for its official use. It is understood, however, that articles imported under such exemption shall not be sold in the Republic of Korea except under conditions agreed with the appropriate authorities of the Government; and

(*c*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications. Imported publications, other than those of the Unit-

ed Nations, shall not be sold in the Republic of Korea except under conditions agreed with the appropriate authorities of the Government.

2. While the Regional Centre shall not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property that form part of the price to be paid, nevertheless, when the Regional Centre is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the appropriate authorities shall, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of the duty or tax.

Article 13. Participants in the meetings of the Regional Centre

1. Representatives of Members of the United Nations invited to meetings, seminars, training courses, symposiums and workshops organized by the Regional Centre shall, while exercising their functions, enjoy the privileges and immunities as set out in article IV of the Convention.

2. The Government, in accordance with relevant United Nations principles and practices and this Agreement, shall respect the complete freedom of expression of all participants in meetings, seminars, training courses, symposiums and workshops organized by the Regional Centre, to whom the Convention shall be applicable.

Article 14. Flag and emblem

The United Nations shall have the right to display the emblem of the United Nations and/or the flag of the United Nations on its premises, vehicles, aircrafts and vessels.

Article 15. Access, transit and residence

1. The Government shall take all necessary measures, without undue delay, to facilitate the entry into and exit from, and movement and sojourn within, the Republic of Korea of the following persons:

(*a*) the Head and other United Nations officials of the Regional Centre, as well as their spouses and dependant relatives;

(*b*) experts on mission for the Regional Centre;

(*c*) officials of the United Nations or specialized agencies, having official business with the Regional Centre; and

(*d*) other persons invited by the Regional Centre on official business.

2. The relevant authorities of the Government shall grant facilities for speedy travel to persons referred to in paragraph 1. Visas, when required, shall be issued as promptly as possible.

3. Persons referred to in paragraph 1 shall hold a personal identity card issued by the Regional Centre equivalent to a standard United Nations identity card.

4. The relevant authorities of the Government shall issue appropriate identity cards to the United Nations officials of the Regional Centre, their spouses and dependent relatives after receiving relevant information from the Regional Centre.

Article 16. Laissez-passer

The Government shall recognize and accept the United Nations *laissez-passer* issued to officials traveling for the purpose of official business of the Regional Centre as a valid travel document equivalent to a passport.

Article 17. Privileges and immunities

1. The Head and other officials of the Regional Centre shall be accorded the privileges and immunities provided for in articles V and VII of the Convention, without prejudice to the reservation made by the Government upon accession thereto. They shall, *inter alia*, enjoy:

(*a*) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, such immunity continuing to be accorded after termination of their employment with the Regional Centre;

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

(*c*) immunity from seizure of their official baggage, except in doubtful cases, granted only to representatives of States and experts on mission.

2. In addition, the Head and other United Nations officials of the Regional Centre shall be:

(*a*) immune, together with their spouses and dependent relatives, from immigration restrictions and alien registration;

(*b*) accorded the same privileges in respect of exchange facilities as those enjoyed by staff members of comparable rank of diplomatic missions;

(*c*) given, together with their spouses and dependent relatives, the same repatriation facilities in times of international crisis as diplomatic envoys; and

(*d*) given the right to import free of duty their personal effects at the time of first taking up their posts in the Republic of Korea and to enjoy, thereafter, the same privileges as other United Nations officials in the Republic of Korea.

3. Experts on mission for the Regional Centre shall be granted the privileges, immunities and facilities provided for in articles VI and VII of the Convention.

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

Article 18. Settlement of disputes

1. Any dispute or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, which is not settled amicably through consultation between the Parties, shall be submitted to arbitration at the request of either Party.

2. Each Party shall appoint one arbitrator and the two arbitrators so appointed shall appoint a third, who shall be the chairperson. If either Party has not appointed an arbitrator within two (2) months of the request for arbitration or if the third arbitrator has not been appointed within two (2) months of the appointment of the two (2) arbitrators, either Party may request the President of the International Court of Justice to appoint an arbitrator.

3. The procedure of the arbitration shall be fixed, in consultation with the Parties, by the arbitrators and the expenses for 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 19. Respect for local laws and regulations

1. Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to observe the laws and regulations of the Republic of Korea. They also have a duty not to interfere in the internal affairs of the Republic of Korea.

2. The Regional Centre shall cooperate at all times with the appropriate authorities of the Government to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges and immunities as well as facilities under this Agreement.

3. Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Head of the Regional Centre shall, upon request, consult with the appropriate authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Government and to the Head of the Regional Centre, the matter shall be determined in accordance with the procedures set out in article 18.

Article 20. General provisions

1. The provisions of this Agreement shall be complementary to the provisions of the Convention, i.e., insofar as any provisions of this Agreement and any provisions of the Convention relate to the same subject matter, the two provisions shall be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other.

2. This Agreement shall enter into force on the date when the Parties have notified each other of the completion of their respective internal procedures for the entry into force of this Agreement.

3. Consultations with a view to amending this Agreement may be held at the request of either Party. Any amendments may be made by mutual consent, in writing.

4. The Parties may enter into supplementary arrangements as shall be necessary. Any relevant matter for which no provision is made in this Agreement shall be settled through consultations between the Parties.

5. Either Party may terminate this Agreement by giving a written notice to the other Party of its decision to terminate the Agreement. This Agreement shall be terminated six (6) months after receipt of such notice by the other Party, except as regards the normal

cessation of the activities of the Regional Centre and the disposal of its property in the Republic of Korea, as well as the resolution of any disputes between the Parties.

6. This Agreement shall be reviewed by the Parties after five (5) years of operation of the Regional Centre.

In witness whereof, the undersigned, duly authorized respectively by the United Nations and the Government, have signed this Agreement.

Done in duplicate at Incheon this tenth day of January, 2012, in the English language.

For the United Nations	For the Government of the Republic of Korea
[*Signed*] Patricia O'Brien	[*Signed*] Kwon, Jae-Jin
Under-Secretary-General for Legal Affairs	Minister of Justice
The Legal Counsel	

(*b*) Agreement between the Government of Libya and the United Nations concerning the status of the United Nations Support Mission in Libya. Tripoli, 10 January 2012*

I. Definitions

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

(*a*) "UNSMIL" means the United Nations Support Mission in Libya established in accordance with Security Council resolution 2009 (2011) of 16 September 2011 in which the Security Council, *inter alia*, reaffirmed "its strong commitment to the sovereignty, independence, territorial integrity and national unity of Libya" and established UNSMIL "to assist and support Libyan national efforts".

(*b*) "Special Representative" means the Special Representative for Libya appointed by the Secretary-General of the United Nations. Any reference to the Special Representative in this Agreement shall, except in paragraph 24, include any member of UNSMIL to whom he or she delegates a specified function or authority. It shall also include, including in paragraph 24, any member of UNSMIL whom the Secretary-General may designate as acting Head of Office of UNSMIL following the death or resignation of the Special Representative;

(*c*) "member of UNSMIL" means:

(i) the Special Representative;

(ii) officials of the United Nations assigned to serve with UNSMIL, including those recruited locally;

(iii) United Nations Volunteers assigned to serve with UNSMIL;

(iv) other persons assigned to perform missions for UNSMIL.

(*d*) "the Government" means the Government of Libya;

* Entered into force on 10 January 2012 by signature, in accordance with the provisions of article XI.

(*e*) "the territory" means the territory of Libya;

(*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 to which Libya is a party;

(*g*) "contractors" means persons, other than members of UNSMIL, engaged by the United Nations, including juridical as well as natural persons and their employees and subcontractors, to perform services for UNSMIL or to supply equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, in support of UNSMIL activities. Such contractors shall not be considered third party beneficiaries to this Agreement;

(*h*) "vehicles" means vehicles in use by the United Nations and operated by members of UNSMIL or contractors in support of UNSMIL activities;

(*i*) "aircraft" means aircraft in use by the United Nations and operated by members of UNSMIL or contractors in support of UNSMIL activities;

(*j*) "vessels" means vessels in use by the United Nations and operated by members of UNSMIL or contractors in support of UNSMIL 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 and any privilege, immunity, exemption, facility or concession granted to UNSMIL or to any member of UNSMIL or to its contractors shall apply in the territory of Libya only.

III. Application of the Convention

3. UNSMIL, its property, funds and assets and its members shall enjoy the privileges and immunities, exemptions and facilities specified in the present Agreement, as well as those provided for in the Convention.

IV. Status of UNSMIL

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

5. The Government undertakes to respect the exclusively international nature of UNSMIL.

United Nations flag, markings and identification

6. The Government recognizes the right of UNSMIL to display the United Nations flag on its headquarters and other premises, on its vehicles, vessels and otherwise as decided by the Special Representative.

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

Communications

8. UNSMIL shall enjoy the facilities in respect of communications that are provided for in article III of the Convention. 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.

9. Subject to the provisions of paragraph 8:

(*a*) UNSMIL shall have the right to install and to operate radio sending, receiving and repeater stations, as well as satellite systems, in order to connect appropriate points within the territory of Libya 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. Such telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations. The frequencies on which such services may operate shall be decided upon in cooperation with the Government and shall be allocated expeditiously by the Government. UNSMIL shall be exempt from any and all taxes on, and from any and all fees for, the allocation of frequencies for this purpose, as well as from any and all taxes on, and all fees for, their use. However, UNSMIL will not claim exemption from fees which are in fact no more than charges for services rendered, it being understood that such charges shall be charged at the most favourable rate.

(*b*) UNSMIL shall enjoy, within the territory of Libya, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of UNSMIL, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio may operate and the areas of land on which sending, receiving and repeater stations may be erected shall be decided upon in cooperation with the Government and shall be allocated expeditiously. UNSMIL shall be exempt from any and all taxes on, and from any and all fees for, the allocation of frequencies for this purpose, as well as from all taxes on, and all fees for, their use. However, UNSMIL will not claim exemption from fees which are in fact no more than charges for services rendered, it being understood that such charges shall be charged at the most favourable rate. Connections with local telephone and electronic data systems may be made only after consultation and in accordance with arrangements made with the Government. Use of those local systems by UNSMIL shall be charged at the most favourable rate.

(*c*) UNSMIL may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNSMIL. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNSMIL or its members. In the event that postal arrangements applying to private mail of members of UNSMIL are extended to the 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

10. UNSMIL, its members and contractors, together with their property, equipment, provisions, supplies, fuel, materials and other goods, including spare parts, as well as vehicles, vessels and aircraft, including the vehicles, vessels and aircraft of contractors used exclusively in the performance of services for UNSMIL, shall enjoy full freedom of movement without delay throughout Libya by the most direct route possible for the purpose of executing the tasks defined in UNSMIL's mandate. The Government shall, where necessary, provide UNSMIL with maps and other information, where available, including maps of and information on the location of dangers and impediments, which may be useful in facilitating UNSMIL's movements and ensuring the safety and security of its members.

11. Vehicles, vessels and aircraft shall not be subject to registration or licensing by the Government, it being understood that copies of all relevant certificates issued by appropriate authorities in other States in respect of aircraft shall be provided by UNSMIL to the Civil Aviation Authority of Libya and that all vehicles and aircraft shall carry third party insurance. UNSMIL shall provide the Government, from time to time, with updated lists of UNSMIL vehicles.

12. UNSMIL and its members and contractors, as well as vehicles, vessels and aircraft, including vehicles, vessels and aircraft of its contractors used exclusively in the performance of services for UNSMIL, may use roads, bridges, airfields and airspace without the payment of any form of monetary contributions, dues, tolls, user fees or charges, including airport taxes, landing fees, parking fees and overflight fees, port fees or charges, including wharfage and compulsory pilotage charges. However, UNSMIL will not claim exemption from charges which are in fact charges for services rendered, it being understood that such charges shall be charged at the most favourable rates.

Privileges and immunities of UNSMIL

13. UNSMIL, as a subsidiary organ of the United Nations, enjoys the status, rights, privileges and immunities, exemptions and facilities of the United Nations pursuant to and in accordance with the Convention. The Government recognizes in particular:

(*a*) The right of UNSMIL, as well as of contractors, to import, by the most convenient and direct route by land, sea or air, free of duty, taxes, fees and charges and free of prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNSMIL or for resale in the commissaries provided for in subparagraph (*b*) below. For this purpose, the Government agrees expeditiously to establish, at the request of UNSMIL, temporary customs clearance facilities for UNSMIL at locations in Libya convenient for UNSMIL not previously designated as official ports of entry for Libya.

(*b*) The right of UNSMIL to establish, maintain and operate commissaries at its headquarters and other premises for the benefit of members of UNSMIL, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified by the Special Representative and approved by the Government 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 UNSMIL. He or she shall give due consideration to observations or requests by the Government concerning the operation of the commissaries;

(*c*) The right of UNSMIL, as well as of contractors, to clear from customs and excise warehouse, free of duty, taxes, fees and charges and free of prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNSMIL or for resale in the commissaries provided for in subparagraph (*b*) above;

(*d*) The right of UNSMIL to re-export or otherwise dispose of all usable items of property and equipment, including spare parts and means of transport, and all unconsumed provisions, supplies, materials, fuel and other goods which have previously been imported, cleared ex customs and excise warehouse or purchased locally for the exclusive and official use of UNSMIL and which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of Libya 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 UNSMIL and the Government at the earliest possible date.

For the purposes of this paragraph, neither UNSMIL nor contractors will claim exemption from fees and charges which are in fact no more than charges for services rendered, it being understood that such fees and charges shall be charged at the most favourable rate.

V. Facilities for UNSMIL and contractors

Premises required for conducting the operational and administrative activities of UNSMIL

14. The Government shall provide, without cost to UNSMIL, in agreement with the Special Representative and for as long as may be required, such areas for headquarters and other premises as may be necessary for the conduct of the operational and administrative activities of UNSMIL, including the establishment of the necessary facilities for maintaining communications in accordance with paragraph 9. Without prejudice to the fact that all such premises remain territory of Libya, 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.

15. The Government undertakes to assist UNSMIL in obtaining and making available, where applicable, water, sewerage, electricity, fuel and other facilities free of charge, or, where this is not possible, at the most favourable rate, and free of all fees, duties and taxes, including value-added tax. Where such utilities or facilities are not provided free of charge, payment shall be made by UNSMIL on terms to be agreed with the competent authority. UNSMIL shall be responsible for the maintenance and upkeep of facilities so provided. In the event of interruption or threatened interruption of service, the Government undertakes to give, as far as is within its powers, the same priority to the needs of UNSMIL as to essential government services.

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

17. Any government official or any other person seeking entry to UNSMIL premises shall first seek and obtain the permission of the Special Representative.

Provisions, supplies and services, and sanitary arrangements

18. The Government agrees to grant promptly, upon presentation by UNSMIL or by contractors of a bill of lading, airway bill, cargo manifest or packing list, all necessary authorizations, permits and licenses required for the import of equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, for the exclusive and official use of UNSMIL, including in respect of import by contractors, free of any prohibitions and restrictions and without the payment of monetary contributions or duties, fees, charges or taxes, including value-added tax. The Government likewise agrees to grant promptly all necessary authorizations, permits and licenses required for the purchase or export of such goods, including in respect of purchase by UNSMIL's contractors, free of any prohibitions and restrictions and without the payment of monetary contributions, duties, fees, charges or taxes.

19. The Government undertakes to assist UNSMIL 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 and services purchased locally by UNSMIL or by contractors for the official and exclusive use of UNSMIL, the Government shall make appropriate administrative arrangements for the remission or return of any excise, tax or monetary contribution payable as part of the price. The Government shall exempt UNSMIL and contractors from general sales taxes in respect of all local purchases for the exclusive and official use of UNSMIL. In making purchases on the local market, UNSMIL shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

20. For the proper performance of the services in support of UNSMIL provided by contractors, other than by nationals of Libya resident in Libya, the Government agrees to provide such contractors with facilities for their entry into and departure from Libya, without delay or hindrance, and for their residence in Libya, as well as for their repatriation in time of crisis. For this purpose, the Government shall promptly issue to such contractors, free of charge and without any restrictions, all necessary visas, licenses and permits. Contractors, other than nationals of Libya resident in Libya, shall be accorded exemption from taxes and monetary contributions in Libya on services, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, provided to UNSMIL, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.

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

Recruitment of local personnel

22. UNSMIL 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 UNSMIL and to accelerate the process of such recruitment.

Currency

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

VI. Status of the members of UNSMIL

Privileges and immunities

24. The Special Representative and the Deputy Special Representative of the Secretary-General, and members of UNSMIL of equivalent ranks as notified by the Special Representative shall have the status specified in sections 19 and 27 of the Convention and shall be accorded the privileges and immunities, exemptions and facilities there provided.

25. Officials of the United Nations assigned to serve with UNSMIL remain officials of the United Nations shall be entitled to the privileges and immunities, exemptions and facilities set out in articles V and VII of the Convention.

26. United Nations Volunteers assigned to serve with UNSMIL shall be assimilated to officials of the United Nations assigned to serve with UNSMIL and shall accordingly enjoy the privileges and immunities, exemptions and facilities set out in articles V and VII of the Convention.

27. Persons assigned to perform missions for UNSMIL, other than United Nations officials, whose names are for that 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 and shall enjoy the privileges, immunities, exemptions and facilities set out in that article and in article VII.

28. Locally recruited personnel of UNSMIL shall enjoy the immunity concerning official acts and the exemption from taxation and the immunity from national service obligations provided for in sections 18 (*a*), (*b*) and (*c*) of the Convention.

30. Members of UNSMIL, including locally recruited personnel, shall be exempt from taxation on the pay and emoluments received from the United Nations. Members of UNSMIL other than locally recruited personnel shall also be exempt from taxation on any income received from outside Libya, as well as from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

29. Members of UNSMIL shall have the right to import free of duty their personal effects in connection with their arrival in Libya. They shall be subject to the laws and regulations of Libya governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Libya with UNSMIL. On departure from Libya, members of UNSMIL 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 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 UNSMIL.

31. 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 Libya by members of UNSMIL, in accordance with the present Agreement.

Entry, residence and departure

The Special Representative and members of UNSMIL shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Libya.*

33. The Government undertakes to facilitate the entry into and departure from Libya, without delay or hindrance, of the Special Representative and members of UNSMIL and shall be kept informed of such movement. Where visas are required, the Government shall grant the Special Representative and members of UNSMIL one-year multiple entry visas, free of charge, upon arrival at the airport or other port of entry. The Special Representative and members of UNSMIL shall be exempt from any prohibitions, restrictions or procedures that may obstruct or cause delay or hindrance to their entry into and departure from Libya, including immigration inspection and restrictions. They shall also be exempt from the payment of taxes, fees or charges on entering into or departing from Libya including airport and departure taxes. They shall, however, complete and submit arrival and departure cards. They shall also be exempt from any regulations governing the residence of aliens in Libya, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Libya.

34. For the purpose of such entry or departure, members of UNSMIL shall only be required to have a personal numbered identity card issued in accordance with paragraph 35 of the present Agreement, except in the case of first entry into Libya, when the United Nations *laissez-passer*, national passport or personal identity card issued by the United Nations shall be accepted in lieu of the said identity card.

Identification

35. The Special Representative shall issue to each member of UNSMIL before or as soon as possible after such member's first entry into Libya, as well as to all locally recruited personnel and to contractors, a numbered identity card, showing the bearer's name and photograph. Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required of a member of UNSMIL.

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

Uniforms and arms

37. United Nations Security Officers designated by the Special Representative may wear the United Nations uniform and/or possess and carry firearms and ammunition

* The numbering of paragraphs corresponds to the original of the Agreement.

while on official duty in accordance with their orders. When doing so, they must wear the United Nations uniform, except as otherwise provided in paragraph 38.

38. United Nations close protection officers and United Nations Security Officers serving in close protection details may carry firearms and ammunition and wear civilian clothes while performing their official functions.

39. UNSMIL shall keep the Government informed of the number and the types of firearms carried by United Nations Security Officers and close protection officers and of the names of the officers carrying them.

Permits and licenses

40. The Government agrees to accept as valid, without tax or fee, a permit or license issued by the Special Representative for the operation by any member of UNSMIL, including locally recruited personnel, of any UNSMIL vehicle and for the practice of any profession or occupation in connection with the functioning of UNSMIL, provided that no such permit or license to drive a vehicle or pilot an aircraft shall be issued to any member of UNSMIL who is not already in possession of an appropriate and valid national or international permit or license for that purpose.

41. The Government agrees to accept as valid, and where necessary promptly to validate, free of charge and without any restrictions, licenses and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by contractors exclusively for UNSMIL. Without prejudice to the foregoing, the Government further agrees to grant promptly, free of charge and without any restrictions, necessary authorizations, licenses and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels.

42. Without prejudice to the provisions of paragraphs 37 and 38, the Government further agrees to accept as valid, without tax or fee, permits or licenses issued by the Special Representative to members of UNSMIL for the carrying or use of firearms or ammunition in connection with the functioning of UNSMIL.

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 UNSMIL, including locally recruited personnel. To this end, personnel designated by the Special Representative shall patrol the premises of UNSMIL and areas where its members are deployed. Elsewhere, such personnel shall be employed only subject to arrangements with the Government and in liaison with it in so far as such employment is necessary to maintain discipline and order among members of UNSMIL.

44. The personnel mentioned in paragraph 43 above may take into custody any person on the premises of UNSMIL. Such 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 24 and 27, officials of the Government may take into custody any member of UNSMIL:

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

(*b*) When such a member of UNSMIL is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any item seized, to the nearest appropriate representative of UNSMIL, whereafter the provisions of paragraph 51 shall apply *mutatis mutandis*.

46. When a person is taken into custody under paragraph 44 or paragraph 45 (*b*), UNSMIL 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. UNSMIL 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 on the terms specified by the authority delivering them. Each party 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 to 46.

Safety and security

48. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel (the "Safety Convention"), to which Libya is a Party, are applied to and in respect of UNSMIL, its members and associated personnel and their equipment and premises. In particular:

(i) the Government shall take all appropriate measures to ensure the safety and security of UNSMIL, its members and associated personnel. It shall take all appropriate steps to protect members of UNSMIL and its associated personnel and 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 UNSMIL are inviolable and subject to the exclusive control and authority of the United Nations;

(ii) except as otherwise provided in paragraph 45, if members of UNSMIL or its associated personnel are captured, detained or taken hostage 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;

(iii) the Government confirms that, as a Party to the Safety Convention, it has established the following acts as crimes under its national law and made 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 UNSMIL or its associated personnel;

b) a violent attack upon the official premises, the private accommodation or the means of transportation of any member of UNSMIL or its associated personnel 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;

(iv) the Government confirms that it has established its jurisdiction over the crimes set out in subparagraph (iii): (*a*) when the crime is committed on the territory of Libya; (*b*) when the alleged offender is a national of Libya; (*c*) when the alleged offender, other than a member of UNSMIL, is present in the territory of Libya;

(v) the Government shall ensure the prosecution, without exception and without delay, of persons accused of acts described in subparagraph (iii) above who are present in the territory of Libya (if the Government does not extradite them), as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNSMIL or its members or associated personnel 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.

49. Upon the request of the Special Representative, the Government shall provide such security as necessary to protect UNSMIL, its members and associated personnel and their equipment during the exercise of their functions.

Jurisdiction

50. All members of UNSMIL, 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 or for UNSMIL and after the expiration of the other provisions of the present Agreement.

51. Should the Government consider that any member of UNSMIL has committed a criminal offence, it shall promptly inform the Special Representative and present to him or her any evidence available to it. Subject to the provisions of paragraph 24, 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 57 of the present Agreement. In the event that criminal proceedings are instituted in accordance with the present Agreement, the courts and authorities of Libya shall ensure that the member of UNSMIL concerned is prosecuted, brought to trial and tried in accordance with international standards of justice, fairness and due process of law, as set out in the International Covenant on Civil and Political Rights (the "Covenant"), to which Libya is a Party and that, in the event that he or she is convicted, sentence of death will not be imposed on him or her.

52. If any civil proceeding is instituted against a member of UNSMIL before any court of Libya, 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 56 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. In that event, the courts and authorities of Libya shall grant the member of UNSMIL concerned sufficient opportunity to safeguard his or her rights in accordance with due process of law and shall ensure that the suit is conducted in accordance with international standards of justice, fairness and due process of law, as set out in the Covenant. If the Special Representative certifies that a member of UNSMIL is unable, because of his or her official duties or authorized absence, to protect his or her interests in the proceeding, the court shall, at the defendant's request, suspend the proceeding until the elimination of the disability, but for no more than ninety days. Property of a member of UNSMIL that is certified by the Special Representative to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of UNSMIL 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

53. The Special Representative or the Secretary-General of the United Nations shall have the right to take charge of and dispose of the body of a member of UNSMIL who dies in Libya, as well as that member's personal property located within Libya, in accordance with United Nations procedures.

VII. Limitation of liability of the United Nations

54. Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to UNSMIL 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 55 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 or 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 have been approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII. Settlement of disputes

55. Except as provided in paragraph 57, any dispute or claim of a private law character to which UNSMIL or any member thereof is a party and over which the courts of Libya 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 UNSMIL, the Special Representative or the Secretary-General of the United Nations shall use his or her best endeavours to ensure compliance.

56. 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.

57. All other disputes between UNSMIL and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation 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 set out in paragraph 55 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.

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

IX. Supplemental arrangements

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

X. Liaison

60. The Special Representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level. The Ministry of Foreign Affairs of the Government of Libya shall act as the main liaison agency for this purpose on the part of the Government.

XI. Miscellaneous provisions

61. Wherever the present Agreement refers to privileges, immunities and rights of UNSMIL and to facilities Libya undertakes to provide to UNSMIL, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

62. The present Agreement shall enter into force immediately upon signature by or for the Secretary-General of the United Nations and the Government.

63. The present Agreement shall remain in force until the departure of the final element of UNSMIL from Libya, except that:

(*a*) the provisions of paragraphs 48 (iii), (iv) and (v), 50, 53 and 57 shall remain in force;

(*b*) the provisions of paragraph 48 (ii) shall remain in force until the release and return to the United Nations of any UNSMIL or associated personnel that have been captured, detained or taken hostage in the performance of their duties as referred to in that paragraph;

(*c*) the provisions of paragraphs 54 and 55 shall remain in force until all claims made in accordance with the provisions of paragraph 54 have been settled.

64. Without prejudice to existing Agreements regarding their legal status and operations in Libya, the provisions of the present Agreement shall apply to offices, funds and programmes of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Libya and perform functions in furtherance of the mandate of UNSMIL.

65. Without prejudice to existing Agreements regarding their legal status and operations in Libya, the provisions of the present Agreement may, as appropriate, be extended to specific specialized agencies and related organizations of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Libya and perform functions in relation to UNSMIL, provided that this is done with the written consent of the Special Representative, the specialized agency or related organization concerned and the Government.

66. This Agreement shall be in two originals, in the Arabic and English languages. In the event of any differences between the texts, the English text shall prevail.

In witness whereof, the undersigned, being the duly authorized plenipotentiary of the Government and the duly appointed representative of the United Nations, have, on behalf of the Parties, signed the present Agreement.

Done at Tripoli on 10 January 2012.

For the Government of Libya	For the United Nations
[*Signed*] Ashur Bin Khayyal	[*Signed*] Ian Martin
Minister of Foreign Affairs and International Cooperation	Special Representative of the Secretary-General

(*c*) Agreement between the United Nations and the Transitional Federal Government of Somalia concerning the status of the United Nations Political Office for Somalia. Mogadishu, 24 January 2012*

I. Definitions

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

* Entered into force on 24 January 2012 by signature, in accordance with the provisions of article XI.

(*a*) "UNPOS" means the United Nations Political Office in Somalia, the establishment of which was first endorsed by the Security Council in its Presidential Statement S/PRST/1995/15 of 6 April 1995;

(*b*) "Special Representative" means the Special Representative for Somalia appointed by the Secretary-General of the United Nations. Any reference to the Special Representative in this Agreement shall, except in paragraph 24, include any member of UNPOS to whom he or she delegates a specified function or authority. It shall also include, including in paragraph 24, any member of UNPOS whom the Secretary-General may designate as acting Head of Office of UNPOS following the death or resignation of the Special Representative;

(*c*) "member of UNPOS" means:

(i) the Special Representative;

(ii) officials of the United Nations assigned to serve with UNPOS, including those recruited locally;

(iii) United Nations Volunteers assigned to serve with UNPOS;

(iv) other persons assigned to perform missions for UNPOS, including United Nations civilian police advisers and United Nations military advisers;

(*d*) "the Government" means the Transitional Federal Government of Somalia or any successor Government of Somalia;

(*e*) "the territory" means the territory of Somalia;

(*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, to which Somalia is a Party;

(*g*) "contractors" means persons, other than members of UNPOS, engaged by the United Nations, including juridical as well as natural persons and their employees and subcontractors, to perform services for UNPOS or to supply equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, in support of UNPOS activities. Such contractors shall not be considered third party beneficiaries to this Agreement;

(*h*) "vehicles" means vehicles in use by the United Nations and operated by members of UNPOS or contractors in support of UNPOS activities;

(*i*) "aircraft" means aircraft in use by the United Nations and operated by members of UNPOS or contractors in support of UNPOS activities;

(*j*) "vessels" means vessels in use by the United Nations and operated by members of UNPOS or contractors in support of UNPOS 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 and any privilege, immunity, exemption, facility or concession granted to UNPOS or to any member of UNPOS or to its contractors shall apply in Somalia only.

III. Application of the Convention

3. UNPOS, its property, funds and assets and its members shall enjoy the privileges and immunities, exemptions and facilities specified in the present Agreement, as well as those provided for in the Convention.

IV. Status of UNPOS

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

5. The Government undertakes to respect the exclusively international nature of UNPOS.

United Nations flag, markings and identification

6. The Government recognizes the right of UNPOS to display the United Nations flag on its headquarters and other premises, on it vehicles and otherwise as decided by the Special Representative.

7. Vehicles and aircraft of UNPOS shall carry a distinctive United Nations identification, which shall be notified to the Government.

Communications

8. UNPOS shall enjoy the facilities in respect of communications that are provided for in article III of the Convention. 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.

9. Subject to the provisions of paragraph 8:

(*a*) UNPOS shall have the right to install and to operate radio sending, receiving and repeater stations, as well as satellite systems, in order to connect appropriate points within the territory of Somalia 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. Such telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations. The frequencies on which such services may operate shall be decided upon in cooperation with the Government and shall be allocated expeditiously by the Government. UNPOS shall be exempt from any and all taxes on, and from any and all fees for, the allocation of frequencies for this purpose, as well as from any and all taxes on, and all fees for, their use. However, UNPOS will not claim exemption from fees which are in fact no more than charges for services rendered, it being understood that such charges shall be charged at the most favourable rate.

(*b*) UNPOS shall enjoy, within the territory of Somalia, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and of establishing the necessary facilities for

maintaining such communications within and between premises of UNPOS, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio may operate and the areas of land on which sending, receiving and repeater stations may be erected shall be decided upon in cooperation with the Government and shall be allocated expeditiously. UNPOS shall be exempt from any and all taxes on, and from any and all fees for, the allocation of frequencies for this purpose, as well as from all taxes on, and all fees for, their use. However, UNPOS will not claim exemption from fees which are in fact no more than charges for services rendered, it being understood that such charges shall be charged at the most favourable rate. Connections with local telephone and electronic data systems may be made only after consultation and in accordance with arrangements made with the Government. Use of those local systems by UNPOS shall be charged at the most favourable rate.

(*c*) UNPOS may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNPOS. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNPOS or its members. In the event that postal arrangements applying to private mail of members of UNPOS 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

10. UNPOS, its members and contractors, together with their property, equipment, provisions, supplies, fuel, materials and other goods, including spare parts, as well as vehicles, aircraft and vessels, including the vehicles, aircraft and vessels of contractors used exclusively in the performance of services for UNPOS, shall enjoy full freedom of movement without delay throughout Somalia by the most direct route possible for the purpose of executing the tasks defined in UNPOS's mandate. The Government shall, where necessary, provide UNPOS with maps and other information, where available, including maps of and information on the location of minefields and other dangers and impediments, which may be useful in facilitating UNPOS's movements and ensuring the safety and security of its members.

11. Vehicles and aircraft shall not be subject to registration or licensing by the Government, it being understood that copies of all relevant certificates issued by appropriate authorities in other States in respect of aircraft shall be provided by UNPOS to the Civil Aviation Authority of Somalia and that all vehicles, aircraft and vessels shall carry third party insurance.

12. UNPOS and its members and contractors, as well as vehicles, aircraft and vessels, including vehicles, aircraft and vessels of its contractors used exclusively in the performance of services for UNPOS, may use roads, bridges, airfields and airspace, and port facilities without the payment of any form of monetary contributions, dues, tolls, user fees or charges, including airport taxes, landing fees, parking fees, overflight fees, port fees or charges, including wharfage charges. However, UNPOS will not claim exemption from charges which are in fact charges for services rendered, it being understood that such charges shall be charged at the most favourable rates.

Privileges and immunities of UNPOS

13. UNPOS, a part of the United Nations, enjoys the status, rights, privileges and immunities, exemptions and facilities of the United Nations pursuant to and in accordance with the Convention. The Government recognizes in particular:

(*a*) The right of UNPOS, as well as of its contractors, to import, by the most convenient and direct route by land or air, free of duty, taxes, fees and charges and free of prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNPOS or for resale in the commissaries provided for in subparagraph (*b*);

(*b*) The right of UNPOS to establish, maintain and operate commissaries at its headquarters and other premises for the benefit of members of UNPOS, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified by the Special Representative and approved by the Government 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 UNPOS. He or she shall give due consideration to observations or requests by the Government concerning the operation of the commissaries;

(*c*) The right of UNPOS, as well as of its contractors, to clear customs and excise warehouse, free of duty, taxes, fees and charges and free of prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNPOS or for resale in the commissaries provided for in subparagraph (*b*);

(*d*) The right of UNPOS, as well as of its contractors, to re-export or otherwise dispose of all usable items of property and equipment, including spare parts and means of transport, and all unconsumed provisions, supplies, materials, fuel and other goods which have previously been imported, cleared customs and excise warehouse or purchased locally for the exclusive and official use of UNPOS and which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of Somalia.

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 UNPOS and the Government at the earliest possible date.

V. Facilities for UNPOS and its contractors

Premises required for conducting the operational and administrative activities of UNPOS

14. The Government shall provide, without cost to UNPOS, in agreement with the Special Representative and for as long as may be required, such areas for headquarters and other premises as may be necessary for the conduct of the operational and administrative activities of UNPOS, including the establishment of the necessary facilities for maintaining communications in accordance with paragraph 9. Without prejudice to the fact that all such premises remain territory of Somalia, 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.

15. The Government undertakes to assist UNPOS in obtaining and making available, where applicable, water, sewerage, electricity and other facilities free of charge, or, where this is not possible, at the most favourable rate, and free of all fees, duties and taxes, including value added tax. Where such utilities or facilities are not provided free of charge, payment shall be made by UNPOS on terms to be agreed with the competent authority. UNPOS shall be responsible for the maintenance and upkeep of facilities so provided. In the event of interruption or threatened interruption of service, the Government undertakes to give, as far as is within its powers, the same priority to the needs of UNPOS as to essential government services.

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

17. Any government official or any other person seeking entry to UNPOS premises shall obtain the permission of the Special Representative.

Provisions, supplies and services, and sanitary arrangements

18. The Government agrees to grant promptly, upon presentation by UNPOS or by its contractors of a bill of lading, airway bill, cargo manifest or packing list, all necessary authorizations, permits and licenses required for the import of equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, for the exclusive and official use of UNPOS, including in respect of import by its contractors, free of any prohibitions and restrictions and without the payment of monetary contributions or duties, fees, charges or taxes, including value-added tax. The Government likewise agrees to grant promptly all necessary authorizations, permits and licenses required for the purchase or export of such goods, including in respect of purchase or export by UNPOS's contractors, free of any prohibitions and restrictions and without the payment of monetary contributions, duties, fees, charges or taxes.

19. The Government undertakes to assist UNPOS 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, fuel, materials and other goods and services purchased locally by UNPOS or by its contractors for the official and exclusive use of UNPOS, the Government shall make appropriate administrative arrangements for the remission or return of any excise, tax or monetary contribution payable as part of the price. The Government shall exempt UNPOS and its contractors from general sales taxes in respect of all local purchases for the exclusive and official use of UNPOS. In making purchases on the local market, UNPOS shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

20. For the proper performance of the services in support of UNPOS provided by its contractors, other than local contractors, the Government agrees to provide such contractors with facilities for their entry into and departure from Somalia, without delay or hindrance, and for their residence in Somalia, as well as for their repatriation in time of crisis. For this purpose, the Government shall promptly issue to such contractors, free of charge and without any restrictions, all necessary visas, licenses and permits. UNPOS's contractors, other than local contractors, shall be accorded exemption from taxes and monetary contributions in Somalia on services, equipment, provisions, supplies, fuel, materials and

other goods, including spare parts and means of transport, provided to UNPOS, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.

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

Recruitment of local personnel

22. UNPOS 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 UNPOS and to accelerate the process of such recruitment.

Currency

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

VI. Status of the members of UNPOS

Privileges and immunities

24. The Special Representative, the Deputy Special Representative of the Secretary-General, the Chief of Staff, and members of UNPOS of equivalent ranks as notified by the Special Representative shall have the status specified in sections 19 and 27 of the Convention and shall be accorded the privileges and immunities, exemptions and facilities there provided.

25. Officials of the United Nations assigned to serve with UNPOS remain officials of the United Nations entitled to the privileges and immunities, exemptions and facilities set out in articles V and VII of the Convention.

26. United Nations Volunteers assigned to serve with UNPOS shall be assimilated to officials of the United Nations assigned to serve with UNPOS and shall accordingly enjoy the privileges and immunities, exemptions and facilities set out in articles V and VII of the Convention.

27. United Nations civilian police advisors, United Nations military advisers and civilian personnel other than United Nations officials whose names are for that 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 and shall enjoy the privileges, immunities, exemptions and facilities set out in that article and in article VII.

28. Locally recruited personnel of UNPOS shall enjoy the immunity concerning official acts, the exemption from taxation and the immunity from national service obligations provided for in sections 18 (*a*), (*b*) and (*c*) of the Convention.

29. Members of UNPOS, including locally recruited personnel, shall be exempt from taxation on the pay and emoluments received from the United Nations. Members of UNPOS other than locally recruited personnel shall also be exempt from taxation on

any income received from outside Somalia, as well as from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

30. Members of UNPOS shall have the right to import free of duty their personal effects in connection with their arrival in Somalia. They shall be subject to the laws and regulations of Somalia governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Somalia with UNPOS. The Government shall, as far as possible, give priority for the speedy processing of entry and exit formalities for all members of UNPOS upon prior written notification. On departure from Somalia, members of UNPOS 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 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 UNPOS.

31. 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 Somalia by members of UNPOS, in accordance with the present Agreement.

Entry, residence and departure

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

33. The Government undertakes to facilitate the entry into and departure from Somalia, without delay or hindrance, of the Special Representative and members of UNPOS and shall be kept informed of such movement. For that purpose, the Special Representative and members of UNPOS shall be exempt from passport and visa regulations and immigration inspection, and restrictions, as well as from payment of any taxes, fees or charges on entering into or departing from Somalia. Members of UNPOS shall also be exempt from any regulations governing the residence of aliens in Somalia, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Somalia.

34. For the purpose of such entry or departure, members of UNPOS shall only be required to have a personal numbered identity card issued in accordance with paragraph 35 of the present Agreement, except in the case of first entry into Somalia, when the United Nations *laissez-passer*, national passport or personal identity card issued by the United Nations shall be accepted in lieu of the said identity card.

Identification

35. The Special Representative shall issue to each member of UNPOS before or as soon as possible after such member's first entry into Somalia, as well as to all locally recruited personnel and to UNPOS's contractors, a numbered identity card showing the bearer's name and photograph. Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required of a member of UNPOS.

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

Uniforms and arms

37. United Nations Security Officers may wear the United Nations uniform. United Nations civilian police advisers and United Nations military advisers may wear the national military or police uniform of their respective States, with standard United Nations accoutrements. United Nations Security Officers, United Nations civilian police advisers and United Nations military advisers may possess and carry firearms and ammunition while on official duty in accordance with their orders. When doing so, they must wear their respective uniforms except as otherwise provided in paragraph 38.

38. United Nations close protection officers and United Nations Security Officers serving in close protection details may carry firearms and ammunition and wear civilian clothes while performing their official functions.

39. UNPOS shall keep the Government informed of the number and the types of firearms carried by United Nations Security Officers and close protection officers and of the names of the officers carrying them.

Permits and licenses

40. The Government agrees to accept as valid, without tax or fee, a permit or license issued by the Special Representative for the operation by any member of UNPOS, including locally recruited personnel, of any UNPOS vehicle and for the practice of any profession in connection with the functioning of UNPOS, provided that no such permit or license shall be issued to any member of UNPOS who is not already in possession of an appropriate and valid national or international permit or license for the purpose concerned.

41. The Government agrees to accept as valid, and where necessary promptly to validate, free of charge and without any restrictions, licenses and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by contractors exclusively for UNPOS. Without prejudice to the foregoing, the Government further agrees to grant promptly, free of charge and without any restrictions, necessary authorizations, licenses and certificates, where required, for the acquisition, use, operation and maintenance of aircraft.

42. Without prejudice to the provisions of paragraphs 37 and 38, the Government further agrees to accept as valid, without tax or fee, permits or licenses issued by the Special Representative to members of UNPOS for the carrying or use of firearms or ammunition in connection with the functioning of UNPOS.

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 UNPOS, including locally recruited personnel. To this end, personnel designated by the Special Representative shall patrol the premises of UNPOS and areas where its members are deployed. Elsewhere, such personnel shall be employed only subject to arrangements with the Government and in

liaison with it in so far as such employment is necessary to maintain discipline and order among members of UNPOS.

44. The personnel mentioned in paragraph 43 above may take into custody any other person on the premises of UNPOS. 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 24 and 27, officials of the Government may take into custody any member of UNPOS:

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

(*b*) When such a member of UNPOS is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any item seized, to the nearest appropriate representative of UNPOS, 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*), UNPOS 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. UNPOS 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 on the terms specified by the authority delivering them. Each party 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 to 46.

Safety and security

48. The Government shall take all necessary steps within its power to ensure the safety, security and freedom of movement of the United Nations, its personnel, associated personnel and their property and assets.

49. Pursuant to its responsibilities as set out in paragraph 48 above, the Government shall, upon the request of the SRSG:

(*a*) provide a sufficient number of personnel for the protection of United Nations property and premises and for the removal of any security threat or persons from those premises;

(*b*) provide appropriate security, including armed escorts, to protect the members of UNPOS during the exercise of their functions. When making any request under this paragraph, the SRSG shall provide the Government with a description of the property, premises or duties of the personnel to be protected and any other information that might reasonably be required in order for the Government to be able effectively to discharge its responsibilities as set out in this paragraph and paragraph 48 above.

50. The Government shall discharge its responsibilities as set out in paragraphs 48 and 49 above in close coordination and consultation with UNPOS. In order to facili-

tate such coordination and consultation, the Government shall provide a liaison officer of appropriate senior rank to coordinate security arrangements with a designated security official of the United Nations.

51. The Government shall regularly provide UNPOS with reports on the security situation in the country in so far as that situation might affect the safety and security of offices, premises and personnel of the United Nations and shall immediately notify UNPOS of existing or potential threats to the offices, premises and personnel of the United Nations.

52. Detailed arrangements regarding the measures that the Government shall take in order to provide for the security of personnel and facilities of the United Nations shall, as necessary, be set out in supplemental arrangements to the present Agreement.

53. Pursuant to its responsibilities as set out in paragraph 48 above, the Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel are applied to in respect of UNPOS and its property, assets and members. In particular:

(*a*) the Government shall take all appropriate measures to ensure the safety and security of members of UNPOS. It shall take all appropriate steps to protect members of UNPOS, 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 UNPOS are inviolable and subject to the exclusive control and authority of the United Nations;

(*b*) if members of UNPOS are captured, detained or held hostage 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 the United Nations or other appropriate authorities. Pending their release, such personnel shall be treated in accordance with universally recognized standards of human rights;

(*c*) the Government shall establish the following acts as crimes and make them punishable by appropriate penalties, taking into account their grave nature:

(i) a murder, kidnapping or other attack upon the person or liberty of any member of UNPOS;

(ii) a violent attack upon the official premises, the private accommodation or the means of transportation of any member of UNPOS likely to endanger his or her person or liberty;

(iii) 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;

(iv) an attempt to commit any such attack; and

(v) 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.

(*d*) the Government shall establish its jurisdiction over the crimes set out in subparagraph (*c*) above: (i) when the crime was committed on Somali territory; (ii) when the alleged offender is an Somali national; (iii) when the alleged offender, other than a member of UNPOS, is present in Somalia, unless it has extradited such a person to the State on whose territory the crime was committed, or to the State of his or her nationality, or to the

State of his or her habitual residence if he or she is a stateless person, or to the State of the nationality of the victim.

(*e*) the Government shall ensure the prosecution without exception and without delay of persons accused of acts described in subparagraph (*c*) above who are present within Somalia (if the Government does not extradite them) as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNPOS 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.

Jurisdiction

54. All members of UNPOS, 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 or for UNPOS and after the expiration of the other provisions of the present Agreement.

55. Should the Government consider that any member of UNPOS has committed a criminal offence, it shall promptly inform the Special Representative and present to him or her any evidence available to it. Subject to the provisions of paragraph 24, 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. In the event that criminal proceedings are instituted in accordance with the present Agreement, the courts and authorities of Somalia shall ensure that the member of UNPOS concerned is prosecuted, brought to trial and tried in accordance with international standards of justice, fairness and due process of law, as set out in the International Covenant on Civil and Political Rights (the "Covenant"), to which Somalia is a Party. No sentence of death will be imposed in the event of a guilty verdict.

56. If any civil proceeding is instituted against a member of UNPOS before any court of Somalia, 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. In that event, the courts and authorities of Somalia shall grant the member of UNPOS concerned sufficient opportunity to safeguard his or her rights in accordance with due process of law and shall ensure that the suit is conducted in accordance with international standards of justice, fairness and due process of law, as set out in the Covenant. If the Special Representative certifies that a member of UNPOS is unable, because of his or her official duties or authorized absence, to protect his or her interests in the proceeding, the court shall, at the defendant's request, suspend the proceeding until the elimination of the disability, but for no more than ninety days. Property of a member of UNPOS that is certified by the Special Representative to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the

satisfaction of a judgement, decision or order. The personal liberty of a member of UNPOS 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 or the Secretary-General of the United Nations shall have the right to take charge of and dispose of the body of a member of UNPOS who dies in Somalia, as well as that member's personal property located within Somalia, 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 UNPOS 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 or 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 have been 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 to which UNPOS or any member thereof is a party and over which the courts of Somalia 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 UNPOS, the Special Representative or the Secretary-General of the United Nations shall use his or her 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 UNPOS and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation 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 set out in paragraph 59 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 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 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 UNPOS and to facilities Somalia undertakes to provide to UNPOS, the Government shall have the ultimate responsibility 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 immediately 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 UNPOS from Somalia, except that:

(*a*) the provisions of paragraphs 53 (iii), (iv) and (v), 54, 57, 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 provisions of paragraph 58 have been settled.

(*c*) the provisions of paragraph 53 (*b*), which shall remain in force until the release or return to the United Nations of any and every member of UNPOS who may have been captured, detained or held hostage in the course of their duties as stipulated in that paragraph.

(*d*) the provisions of paragraph 53 (*e*), which shall remain in force until the prosecutions mentioned in that paragraph are completed.

68. Without prejudice to existing Agreements regarding their legal status and operations in Somalia, the provisions of the present Agreement shall apply to offices, funds and programmes of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Somalia and perform functions in furtherance of the mandate of UNPOS.

In witness whereof, the undersigned, being the duly authorized plenipotentiary of the Government and the duly appointed representative of the United Nations, have, on behalf of the Parties, signed the present Agreement.

Done at Mogadishu, on 24th day of January 2012, in two original copies in the English language.

For the United Nations	For the Transitional Federal Government of Somalia
[*Signed*] Mr. Augustine Mahiga	[*Signed*] H.E. Dr. Abdiweli Mohamed Ali
Special Representative of the Secretary-General for Somalia	Prime Minister

(*d*) Agreement between the United Nations and the Government of India relating to the establishment of the Sub-regional Office for South and South-West Asia of the United Nations Economic and Social Commission for Asia and the Pacific. Bangkok, 13 March 2012*

The United Nations and the Government of India,

Considering that the General Assembly of the United Nations decided in its resolution 63/260 of 24 December 2008, to approve the establishment of an ESCAP Sub-regional Office for South and South-West Asia,

Whereas the Commission, in its letter dated 6 October 2009, following a comprehensive process of consultations with member States, accepted the offer from the Government of India, to establish the ESCAP Sub-regional Office for South and South-West Asia in New Delhi,

Whereas the Government of India agrees to ensure the availability of all necessary facilities to enable the Sub-regional Office to perform its functions and any related activities,

Desiring to conclude an agreement for the purpose of the establishment of an ESCAP Sub-regional Office for South and South-West Asia in India.

Have agreed as follows:

Article I. Definitions

In this Agreement, the expression(s):

(*a*) "ESCAP" means the United Nations Economic and Social Commission for Asia and the Pacific;

(*b*) "the Host Country" means India;

(*c*) "the Government" means the Government of India;

(*d*) "the Parties" means the United Nations and the Government;

* Entered into force on 13 March 2012 by signature, in accordance with the provisions of article XX.

(*e*) "the Office" means ESCAP Sub-regional Office for South and South-West Asia;

(*f*) "the Head of Office" means the senior officer appointed by the Secretary-General, or the authorized representative of the senior officer;

(*g*) "the General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which India acceded on 13 May 1948 without reservation;

(*h*) "the Pension Fund" means the United Nations Joint Staff Pension Fund or its successors;

(*i*) "competent authorities" means central, local or other authorities under the laws of the Host Country;

(*j*) "Officials" means all staff members assigned to the Office, irrespective of nationality, with the exception of persons who are locally recruited and assigned to hourly rates as provided for in United Nations General Assembly resolution 76(1) of 7 December 1946;

(*k*) "Experts on Mission" means persons, other than officials of the Office, performing missions at the request of or on behalf of the Office;

(*l*) "archives of the Office" means all records, correspondence, documents, manuscripts, computer records, still and motion pictures, film and sound recordings, belonging to or held by the Office in furtherance of its functions;

(*m*) "Office premises" means the facilities in the Host Country used for conducting functions by the Office;

(*n*) "property of the Office" means all property, including funds, income and other assets belonging to the Office or held or administered by the Office in furtherance of the functions of the Office;

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

(*p*) "communications" means any emission, transmission or reception of written or verbal information, images, sound or information of any nature by wire, radio, satellite, optical fibre or any other electronic or electromagnetic means.

Article II. Establishment of the Office

1. The Office shall be established in the city of New Delhi, India.

2. The Parties shall cooperate in ensuring the uninterrupted operation of the Office.

Article III. Objective

The objective of the Office is to promote inclusive and sustainable development and the achievement of the internationally agreed development goals, including the Millennium Development Goals, focusing on the specific priorities of ESCAP member States in South and South-West Asia.

The presence of the Office will strengthen ESCAP presence and interventions at the sub-regional level, enabling better targeting and delivery of programmes that address specific key priorities in South and South-West Asia subregion as decided by the member States of UNESCAP.

Article IV. Legal capacity

1. The Office shall have the capacity:

(*a*) to contract;

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

(*c*) to institute legal proceedings.

Article V. The Office

1. (*a*) The Office premises shall be inviolable. No officer or official of the competent authorities shall enter the Office premises to perform any official duties therein except with the express consent of, and under the conditions approved by the Head of Office, at his request.

(*b*) Nothing in this Agreement shall prevent the reasonable application by the competent authorities of measures for the protection of the Office premises against fire or other emergency requiring prompt protection action.

(*c*) The Office premises shall be used solely to further its purposes and activities. The Head of Office may also permit the use of the Office premises and facilities for meetings, seminars, exhibitions and other related purposes which are organized by the Office, the United Nations, ESCAP or other related organizations.

(*d*) Without prejudice to the provisions of the General Convention or of this Agreement, the United Nations shall prevent the seat of the United Nations from being used as refuge by persons who are avoiding arrest by the competent Government authorities, who are required by the Government for extradition to another country, or who are endeavouring to avoid services of legal process.

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

3. Except as otherwise provided in this Agreement or in the General Convention, the laws applicable in the Host Country shall apply within the Office premises. However, the Office premises shall be under the immediate control and authority of the Office itself which may establish regulations for the execution of its functions therein.

4. The Office shall be entitled to fly the United Nations flag and display its emblem on the Office premises and means of transport of the Office.

Article VI. Security and protection

1. The competent authorities shall ensure the security and protection of the Office premises and exercise due diligence to ensure that the tranquillity of the Office premises is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity. If so requested by the Head of Office, the competent authorities shall provide adequate police force necessary for the preservation of law and order in the Office premises or in its immediate vicinity, and for the removal of persons therefrom.

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

Article VII. Public services

1. The competent authorities shall use their best efforts, in consultation with the Office, to ensure that the Office premises shall be supplied with the necessary public utilities and services, including, without limitation by reasons of this enumeration, electricity, water, sewerage, gas, post, telephone, telegraph, local transportation, drainage, collection of refuse and fire protection, and that such public utilities and services shall be supplied on equitable terms.

2. In case of any interruption or threatened interruption of any such services, the competent authorities shall consider the needs of the Office as being of equal importance with the official agencies in the Host Country and shall take steps accordingly to ensure that the work of the Office is not prejudiced.

3. The Head of Office shall, upon request, make suitable arrangements to enable the appropriate public service bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the Office premises.

Article VIII. Archives of the Office

1. The archives of the Office shall be inviolable.

Article IX. Legal status of the Office

1. The General Convention shall be applicable to the Office, the Head of Office, Officials and experts on mission.

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

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

Article X. Communications facilities

1. The Office shall enjoy, for its official communications, treatment not less favourable than that accorded by the Host Country to any Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communication, and press rates for information to the press and radio.

2. No censorship shall be applied to the official correspondence and other official communications of the Office.

3. The Office shall have the right to use codes and to despatch and receive correspondence by couriers and bags. The bags must bear visibly the United Nations emblem and may contain only documents or articles intended for official use, and the courier shall be provided with a courier certificate issued by the United Nations.

Article XI. Exemption from taxes, duties, import or export restriction

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

(*a*) exempt from all direct and indirect taxes; it is understood, however, that the Office will not claim exemption from taxes which are, in fact, no more than taxes or charges for public utility services, according to the amount of services rendered, and which can be specifically identified, described and itemized;

(*b*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Office for its official use. It is understood, however, that articles imported under such exemption will not be sold in the Host Country except under conditions agreed with the competent authorities;

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

2. While the Office will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Office is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the competent authorities will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article XII. Funds, assets and other property

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

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

(*b*) freely transfer its funds, gold or currency to or from the Host Country or within the Host Country and convert any currency held by it into any other currency.

Article XIII. United Nations' meetings

1. Any building in or outside New Delhi which may be used with the concurrence of the Government for conferences, meetings, seminars, training courses, symposiums, workshops and similar activities organised by the United Nations shall be temporarily included in the Office premises and shall be deemed to be covered by this Agreement for the duration of such conferences, meetings, seminars, training courses, symposiums, workshops and similar activities organised by the United Nations.

Article XIV. Access, transit and residence

1. The competent authorities shall take all necessary measures to facilitate the entry into, sojourn in and transit through the Host Country territory of the persons listed below

and their spouses and relatives dependent on them for the purposes of official business of such persons related to the Office:

(*a*) the Head of Office, Officials and experts on mission;

(*b*) persons performing services, fellows and trainees of the Office;

(*c*) Officials of the United Nations or specialized agencies or of the International Atomic Energy Agency, having official business with the Office;

(*d*) Personnel of the research and training centres and programmes and associated institutions of ESCAP, and persons participating in the programmes of ESCAP; and

(*e*) Other persons invited by the Office on official business.

2. The Office shall notify the competent authorities as far as possible in advance, of the names of the persons described in paragraph 1 above, and of their spouses and relatives dependent on them, together with other relevant data regarding them, as well as any changes therein. The facilities provided for in this article include granting of visas without charge and as promptly as possible, where required for persons referred to above.

3. No act performed by any person referred to in paragraph 1 in his official capacity with respect to the Office shall constitute a reason for preventing his entry into or departure from, or for requiring him to leave, the territory of the Host Country.

Article XV. Privileges, immunities and other facilities

1. Officials of the Office shall have:

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

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

(*c*) immunity from seizure or inspection of their official baggage;

(*d*) immunity from national service obligations.

2. In addition, internationally-recruited officials of the Office shall:

(*a*) be immune, together with their spouse and relatives dependent on them, from immigration restrictions and alien registration;

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

(*c*) have the right to import free of duty their furniture and effects at the time of first taking up their post in the Host Country. Thereafter, in respect of import of personal effects, including motor vehicles and consumables for personal use, the privileges enjoyed shall be the same as those enjoyed by officials of United Nations Agencies, Programmes and Funds in the Host Country.

3. The Head of Office, in addition to the aforementioned privileges and immunities, may be accorded additional facilities consistent with the relevant laws and regulations of the Host Country.

4. Experts on mission shall enjoy such privileges and immunities as are provided for *mutatis mutandis* in article VI of the General Convention. In addition, they shall be entitled to the privileges, immunities and facilities specified in paragraph 2 above.

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

Article XVI. Locally-recruited personnel assigned to hourly rates

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

Article XVII. United Nations laissez-passer

1. The Government shall recognize and accept the United Nations *laissez-passer* issued to Officials as a valid travel document equivalent to a passport. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

2. Similar facilities specified in paragraph 1 above shall be accorded to persons who though not the holders of United Nations *laissez-passer* have a certificate that they are travelling on the business of the United Nations.

Article XVIII. Social security and the Pension Fund

1. The Pension Fund shall enjoy legal capacity in the Host Country and shall enjoy the same exemptions, privileges and immunities as the United Nations itself. Benefits received from the Pension Fund shall be exempt from taxation.

2. The Parties agree that, owing to the fact that officials of the United Nations are subject to the United Nations Staff Regulations and Rules, including article VI thereof, which establish a comprehensive social security scheme, the United Nations and its officials, irrespective of nationality, shall be exempt from the laws of the Host Country on mandatory coverage and compulsory contributions to the social security schemes of the Host Country during their appointment with the United Nations.

3. The provisions of paragraph 2 above shall apply *mutatis mutandis* to the members of families forming part of the household of persons referred to in paragraph 2 above, unless they are employed or self-employed in the Host Country or receive social security benefits from the Host Country.

Article XIX. Settlement of disputes

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

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

(*b*) disputes involving any of the individuals covered by this Agreement who by reasons of his or her official position enjoys immunity, if immunity has not been waived in accordance with article XV, paragraph 5.

2. Any disputes between the Parties concerning the interpretation or application of this Agreement or of any supplemental Agreement, or any question affecting the Office premises, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be appointed by the Government, one to be appointed by the Secretary-General, and the third, who shall be the chairperson of the tribunal, to be appointed by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be appointed by the President of the International Court of Justice at the request of the United Nations or the Government.

Article XX. General provisions

1. Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to observe the laws and regulations of the Host Country. They also have a duty not to interfere in the internal affairs of the Host Country.

(*a*) The Head of Office shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur, and for this purpose shall establish such rules and regulations as may be deemed necessary and expedient, for the Officials and experts and for such other persons as may be appropriate.

(*b*) Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Head of Office shall, upon request, consult with the competent authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Government and to the Head of Office, the matter shall be determined in accordance with the procedure set out in article XIX, paragraph 2.

2. The provisions of this Agreement and the provisions of the General Convention shall be applicable to the Office with equal force. Nothing in the present Agreement shall be construed as prejudicial in any manner the provisions of the General Convention.

3. Consultations with respect to the modification of this Agreement shall be entered into at the request of either party. Any modification may be made by mutual consent.

4. The Parties may enter into such supplemental Agreements as may be necessary.

5. This Agreement shall cease to be in force if the Office ceases to operate in or is removed from the territory of the Host Country, except for such provisions as may be applicable in connection with the orderly termination of operations of the Office in the Host Country and disposal of its property therein.

6. This Agreement shall enter into force upon signature.

In witness whereof, the undersigned, duly appointed representatives of the Parties, have signed the present Agreement at Bangkok, Thailand on this 13 day of March, 2012, in the English language, in duplicate.

For the United Nations	For the Government of India
[*Signed*] Ms. Noeleen Heyzer	[*Signed*] Mr. Anil Wadhwa
Under-Secretary-General of the United Nations and ESCAP Executive Secretary	Ambassador Extraordinary and Plenipotentiary of India to the Kingdom of Thailand and India's Permanent Representative to ESCAP

(*e*) Exchange of letters constituting an Agreement between the United Nations and the Government of the Republic of India concerning the organization of the Fifth Regional Workshop for Police Officers, Prosecutors and Judges in South Asia on Effectively Countering Terrorism to be held in New Delhi, India, from 20 to 22 March 2012. New York, 16 and 20 March 2012*

I

16 March 2012

Excellency,

1. I have the honour to refer to the arrangements concerning the organization of the Fifth Regional Workshop for Police Officers, Prosecutors and Judges in South Asia on Effectively Countering Terrorism (hereinafter referred to as "the Workshop"),

2. The Workshop, to be hosted by the Government of the Republic of India, represented by the Ministry of External Affairs (hereinafter referred to as "the Government"), in association with the United Nations, represented by the Counter-Terrorism Committee Executive Directorate (CTED), will be held in New Delhi from 20 March to 22 March 2012.

3. The purpose of the fifth workshop is to enhance the counter-terrorism capacities of law enforcement personnel in the region. The workshop will provide an opportunity to discuss the role of the police, prosecutors and judges in combating terrorism and the challenges they face in leading effective investigations and prosecutions. It will also provide a forum for discussing effective measures aimed at enhancing domestic and international cooperation in the fight against terrorism.

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

(*a*) Member States of the South Asian Association for Regional Cooperation (SAARC);

(*b*) A representative of the SAARC Secretariat;

(*c*) Other participants, invited as observers by the United Nations and the Government, including representatives of the United Nations system and intergovernmental or non-governmental organizations or institutions;

(*d*) Experts

The total number of overseas participants will be approximately 50.

* Entered into force on 20 March 2012, in accordance with the provisions of the letters.

(*e*) Additional Indian Government officials and representatives of diplomatic missions based in India will be invited to take part in the opening session.

5. The Workshop will be conducted in English.

6. The United Nations will be responsible for:

(*a*) The planning and running of the Workshop, with the assistance of the Center on Global Counterterrorism Cooperation (hereinafter referred to as "the Center") and its local partner.

7. The Government will be responsible for:

(*a*) Providing co-funding to finance the workshop;

(*b*) Co-signing, together with the Executive Director of CTED, invitation letters to be sent to all participants;

(*c*) Facilitating participation of a senior Indian Government official to deliver the keynote speech during the opening session.

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

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 ("the Convention"), to which the Republic of India is a party shall be applicable in respect of the Workshop. In particular, representatives of States shall enjoy the privileges and immunities accorded 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 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 Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947;

(ii) 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;

(iii) 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 Workshop.

(*b*) The Government shall take the necessary measures to facilitate the unimpeded entry and exit for the Republic of India for all participants and all persons performing functions in connection with the Workshop. The Government undertakes to exempt all participants and all persons performing functions in connection with the Workshop from the payment of visa fees, in accordance with applicable visa procedures.

9. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Meeting in an atmosphere of security and tranquillity free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this Officer shall work in close cooperation with a designated senior official of the United Nations.

10. 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 Workshop premises that are provided by or are under the control of the Government for the Workshop;

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

(*c*) the employment for the Workshop of personnel provided or arranged by the Government;

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

11. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to section 30 of the Convention or to any other applicable Agreement, shall, unless the parties otherwise agree, be resolved by negotiations or any other agreed mode of settlement. Any such dispute that is not settled by negotiations 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 Chairperson, 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 Chairperson, then such arbitrators 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.

12. 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 Republic of India on the holding 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 its preparation and for all matters relating to any of its provisions to be settled.

Accept, Excellency, the assurances of my highest consideration.

[*Signed*] Mike Smith
Executive Director
Counter-Terrorism Committee
Executive Directorate

II

20 March 2012

Dear Mr. Smith,

Reference your letter dated 16 March 2012 concerning the organization of the Fifth Regional Workshop for Police Officers, Prosecutors and Judges in South Asia on Effectively Countering Terrorism to be held in New Delhi from 20–22 March 2012.

I write to confirm on behalf of the Government of India the acceptance of the terms proposed in your letter. This exchange of letters shall constitute an Agreement between the United Nations and the Government of India on the holding of the Workshop.

Yours sincerely,

[*Signed*] H.E. Mr. H. S. Puri
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the
Republic of India to the United Nations

(*f*) Agreement between the United Nations and the Federative Republic of Brazil regarding arrangements for the United Nations Conference on Sustainable Development, to be held at Rio de Janeiro, Brazil, from 13 to 22 June 2012. New York, 5 April 2012*

Whereas the General Assembly of the United Nations, by its resolution 64/236 of 31 March 2010, decided to hold the United Nations Conference on Sustainable Development with the objective of securing renewed political commitment for sustainable development, assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges (hereinafter referred to as "the Conference") in June 2012;

Whereas the General Assembly of the United Nations accepted with appreciation and gratitude the generous offer of the Government of the Federative Republic of Brazil (hereinafter referred to as "the Government") to host the United Nations Conference on Sustainable Development;

Whereas the Conference has as its themes: a green economy in the context of sustainable development and poverty eradication and the institutional framework for sustainable development;

Whereas the General Assembly, by the same resolution, decided that the Conference should be attended at the highest possible level, including Heads of State and Government or other representatives, and further decided that the Conference and its preparatory process, shall ensure the balanced integration of economic development, social development and environmental protection, as these are interdependent and mutually reinforcing components of sustainable development and called for the active participation of all major groups, as identified in Agenda 21 and further elaborated in the Johannesburg Plan of Implementation and decisions taken at the eleventh session of the Commission, at all stages of the preparatory process;

* Entered into force on 11 May 2012 by notification, in accordance with the provisions of article XV.

Whereas the General Assembly of the United Nations, in operative paragraph 17 of resolution 47/202 of 22 December 1992, decided that United Nations bodies may 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

1. The Conference shall be held in Rio de Janeiro, Brazil, at Riocentro Convention Centre from 13 to 22 June 2012. For the purposes of the present Agreement, the term "Conference" shall include the Conference itself, from 20 to 22 June 2012, as well as the third Preparatory Meeting of the Conference, from 13 to 15 June 2012. All activities will be held at Riocentro Convention Centre.

2. Besides the Riocentro Convention Centre premises, the Government shall provide additional official areas for the use of the States Members of the United Nations, Members of the specialized agencies or Members of the International Atomic Energy Agency, non-Member States, entities and 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 United Nations, interested organs of the United Nations, the World Bank, the International Monetary Fund and the World Trade Organization, other intergovernmental organizations accredited to the Conference, and the civil society in general, for exhibitions, seminars, meetings, cultural activities and other manifestations related to the Conference.

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, members of the specialized agencies or members of the International Atomic Energy Agency;

(*b*) Representatives of non-Member States, entities and 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 United Nations;

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

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

(*e*) Representatives of the World Bank, the International Monetary Fund and the World Trade Organization;

(*f*) Representatives of other intergovernmental organizations accredited to the Conference;

(*g*) Representatives of non-governmental organizations and other major groups accredited to the Conference;

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

(*i*) Officials of the United Nations Secretariat;

(*j*) Other persons invited by the United Nations in consultation with the Government of the Federative Republic of Brazil.

2. The Secretary-General of the United Nations or the Secretary-General of the Conference shall designate the officials of the United Nations assigned to attend the Conference for the purpose of servicing it. The Secretary-General shall provide to the Government a list of such personnel and their functions in due time before the opening of the Conference.

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.

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, 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 II* of this Agreement.

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

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

5. The Government shall install, at its own expense, within the Conference area, 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

* The annexes are not reproduced herein.

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 the information media, in particular, to the extent required by the United Nations.

7. In addition to the facilities for the information media 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 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 this 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. Each participant shall be responsible for covering their own 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 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.

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

3. The Government, in consultation with the United Nations, shall provide, at its own expense, an adequate number of cars with drivers with designated parking facilities 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 III).*

Article VII. Police protection and security

1. The Government shall be responsible for providing, at its expense, such police protection and security as may be required to ensure the effective functioning of the Conference without interference of any kind. Such police service shall be under the direct supervision and control of a senior officer to be designated by the Government. He/she shall work in close cooperation with the senior security liaison officer appointed by the United Nations Department of Safety and Security for this purpose, so as to ensure a proper atmosphere of security and tranquillity.

2. Security within the Conference premises shall be under the direct supervision and control of the United Nations, and shall be carried out in close, collaboration with the Brazilian security authorities, whereas security outside the Conference premises shall be the responsibility of the Government. The boundaries of these two security zones and the modalities of cooperation shall be clearly defined by the Government and the United Nations by the time the premises are handed over to the authority of the United Nations.

3. The modalities of security cooperation between the United Nations and the Government in these two areas shall be detailed in a separate memorandum of understanding to be concluded between the United Nations and the Government. The United Nations and the Government shall cooperate in the preparation of a comprehensive security plan based on the United Nations security assessment of the Conference. This security plan shall be the framework upon which all tasks relating to security will be executed.

4. The Government shall provide security equipment and security personnel at its own expense to the United Nations as specified in annexes II and III to this Agreement.

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, adequate number of local personnel as agreed between the United Nations and the Government as specified in annex III of this Agreement.

* The annex is not reproduced herein.

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 Brazil rather than at established United Nations Headquarters (New York). Such additional costs 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 Brazil 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 annex I.*

2. 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 all deposits or advances made by the Government, within one month of the receipt of the detailed accounts. Should the actual additional costs exceed the total amount deposited, 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.

* Not reproduced herein.

2. The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand except where it is agreed by the United Nations and the Government that such damage, loss or injury is caused by the gross negligence or willful misconduct of the United Nations or its officials. This is without prejudice "to any defences that the Government may have against any such action, claim or other demand arising out of Acts of God or *force majeure*.

Article XI. Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations (the "Convention"), adopted by the General Assembly on 13 February 1946, to which Brazil is a party, shall be applicable, in respect of the Conference.

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

3. The representatives of the specialized or related agencies, referred to in article II, paragraph 1 (*d*) and (*e*) shall enjoy the privileges and immunities provided in 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.

4. All persons referred to in article II shall have the right to unimpeded entry and exit from Brazil. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Conference, visas shall be granted not later than two weeks before the opening of the Conference. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered at the airport of arrival to those who 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 Conference.

5. The provisions outlined in the paragraph above do not exclude the presentation by the Government of well-founded objections concerning a particular individual. Such objections, however, must relate to specific criminal or security related matters and not to nationality, religion, professional or political affiliation.

6. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the Conference premises specified in article III above shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be 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 Brazil at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Brazil in connection with the Conference and to reconvert any such funds at the prevailing market rate.

Article XII. Import duties and tax

The Government shall allow the temporary importation, tax-free and duty-free, of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the Conference. It shall issue, without undue delay 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, except for a dispute subject to section 30 of the Convention 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 negotiations or any other agreed mode of settlement shall be submitted to the procedure contained in article XIII of the Agreement between the Government and the United Nations regarding the arrangements for the United Nations Conference on Environment and Development concluded on 16 September 1991.

Article XIV. Annexes

1. The annexes to this Agreement shall form an integral part hereof and unless expressly provided otherwise, a reference to this Agreement constitutes, at the same time a reference to any annex hereto. The exact number of items listed in the annexes may be subject to modifications.

2. Notwithstanding paragraph 1 of this article, the standards and number of items listed in the annexes to this Agreement should be considered minimum standards and numbers. If the Government wishes to provide higher standards or more items than requested by the United Nations, the Government may do so after prior consultation with the United Nations.

Article XV. Final provisions

1. This Agreement shall enter into force upon notification to the United Nations by the Government, in writing, of the fulfilment of its internal procedures necessary for the entry into force of this Agreement. It shall remain in force thereafter, throughout the Conference, including its preparatory period, until the conclusion of all activities and the settlement of all matters arising from the implementation of this Agreement.

2. This Agreement may be modified by written Agreement between the United Nations and the Government. In that case, the modified version of the Agreement shall be subject to the same procedure as described in paragraph 1 of this article, in order to enter into force.

Signed this 5th day of April 2012 in two originals, in the English and Portuguese languages. For the purposes of interpretation and in case of conflict, the English text shall prevail.

For the United Nations For the Federal Republic of Brazil

[*Signed*] Sha Zukang

Secretary-General for the United Nations Conference on Sustainable Development

[*Signed*] Maria Luiza Ribeiro Viotti

Ambassador Extraordinary and Plenipotentiary

Permanent Representative

(*g*) Exchange of letters constituting an Agreement between the United Nations and the Government of Thailand on the holding of the Regional Course in International Law, to be held in Bangkok from 12 to 30 November 2012. New York, 27 February 2012 and 22 May 2012*

27 February 2012

Excellency,

I have the honour to refer to the arrangements concerning the organization of the Regional Course in International Law (hereinafter referred to as "the Regional Course"), which is an activity conducted under the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, established by the General Assembly in 1965.

The Regional Course will be organized by the United Nations, represented by the Office of Legal Affairs (Codification Division) (hereinafter referred to as "the United Nations"), in cooperation with the Government of the Kingdom of Thailand, represented by the Ministry of Foreign Affairs (hereinafter referred to as "the Government"), and will be held in Bangkok from 12–30 November 2012. The organization of the Regional Course is subject to the availability of necessary funding. With the present letter, I wish to obtain your Government's acceptance of the following:

1. The purpose of the Regional Course will be to provide international law training to persons with a legal background and professional experience in international law from Asia and the Pacific, primarily present in Bangkok, between 24 and 45 years of age, and with a demonstrated proficiency in English.

2. Candidates from the following countries will be invited to apply to the Regional Course: Afghanistan, Bahrain, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Cyprus, Democratic People's Republic of Korea, Fiji, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Malaysia, Maldives, Marshall Islands, Micronesia (Federated States of), Mongolia, Myanmar, Nauru, Nepal, Oman, Pakistan, Palau, Papua New Guinea, Philippines, Qatar, Republic of Korea, Samoa, Saudi Arabia, Singapore, Solomon Islands, Sri Lanka, Syrian Arab Republic, Tajikistan, Thailand, Timor Leste, Tonga, Turkmenistan, Tuvalu, United Arab Emirates, Uzbekistan, Vanuatu, Viet Nam, and Yemen.

3. The selection of the participants is made by the United Nations. A list of participants will be provided to the Government following the completion of the selection process. The maximum number of participants will be 35, comprising up to 20 fellowship recipients (no more than one fellowship recipient per country) and self-funded participants

* Entered into force on 22 May 2012, in accordance with the provisions of said letters.

from the countries listed in paragraph 2 (of which 5 may be from the Host Country), as well as from international and regional organizations.

4. The Regional Course will be held at Ministry of Foreign Affairs of Thailand, Bangkok, and will be conducted in English.

5. The United Nations will be responsible for:

(*a*) planning and running the Regional Course, including developing the curriculum and inviting lecturers;

(*b*) disseminating information, receiving applications and selecting participants;

(*c*) preparing study materials relevant to the course and shipping them to Bangkok;

(*d*) providing a course certificate issued by the United Nations;

(*e*) evaluating and reporting following the conclusion of the Regional Course;

(*f*) providing stipends for the fellowship participants (maximum 20) in accordance with the United Nations policies and procedures for training and fellowships;

(*g*) providing travel and accommodation for two legal officers to be present in Bangkok for the duration of the Regional Course;

(*h*) providing travel, accommodation, per diem and remuneration for lecturers;

(*i*) providing travel, when applicable, and health insurance for up to twenty fellowship participants;

(*j*) providing local transportation for United Nations staff members, fellowship participants and lecturers in Bangkok, if applicable;

(*k*) providing a name list or name lists of experts performing functions for the United Nations in connection with the Regional Course;

6. The Government will be responsible for:

(*a*) providing a suitable venue for the Regional Course, including necessary equipment and service for visual presentations;

(*b*) providing accommodation, breakfast and dinner for the fellowship participants (maximum 20);

(*c*) providing lunches, water and coffee breaks during the weekdays for up to 40 persons;

(*d*) arranging transportation for United Nations staff members, lecturers and fellowship participants on arrival and departure to and from Thailand;

(*e*) providing any necessary office space and equipment, including a photocopying machine and word processing facilities, and necessary communication facilities (telephone, facsimile and Internet) for use by the United Nations legal officers and lecturers during their stay in Bangkok;

(*f*) providing a local counterpart to assist with advance planning and necessary administrative support during the Regional Course and for assisting with fund raising activities undertaken in relation to the organization of the Regional Course.

7. The Government will designate a person to act as focal point in Bangkok, to provide necessary assistance for the organization of the Regional Course, including addressing administrative issues prior to and during the Regional Course.

8. The following terms shall apply to the Regional Course:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 (hereinafter referred to as "the Convention", to which the Government is a party, shall be applicable in respect of the Regional Course. In particular, representatives of States will enjoy the privileges and immunities accorded under article IV of the Convention. Experts performing functions for the United Nations in connection with the Regional Course shall enjoy the privileges and immunities provided under articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Regional Course shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(ii) Without prejudice to the provisions of the Convention, persons performing functions for the United Nations in connection with the Regional Course shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Regional Course;

(*b*) All participants and all persons performing functions in connection with the Regional Course shall have the right to unimpeded entry and exit from Thailand. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Regional Course, visas shall be granted not later than two weeks before the opening of the Regional Course. 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. Arrangements shall also be made to ensure that visas for the duration of the Regional Course are delivered at the airport of arrival to those who are unable to obtain them prior to their arrival.

9. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Regional Course in an atmosphere of security and tranquillity free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, the senior officer shall work in close cooperation with a designated senior official of the United Nations.

10. 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 Regional Course premises that are provided by or are under the control of the Government for the Regional Course;

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

(*c*) the employment for the Regional Course of personnel provided or arranged by the Government.

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

11. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to section 30 of the Convention or to any other applicable

Agreement, shall, unless the parties otherwise agree, be resolved by negotiations or any other agreed mode of settlement. Any such dispute that is not settled by negotiations 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 Chairperson, 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 Chairperson, then such arbitrators shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

I further propose that upon receipt of your 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 Kingdom of Thailand on the holding of the Regional Course in International Law, which shall enter into force on the date of your reply and shall remain in force for the duration of the Regional Course, 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*] Stephen Mathias
Assistant Secretary-General
in charge of the Office of Legal Affairs

II

22 May 2012

Sir,

I have the honour to acknowledge the receipt of your Note dated 27 February 2012, which reads as follows:

[*See letter I*]

In reply, I have the honour to confirm that your proposal is acceptable to the Government of the Kingdom of Thailand, and that your Note and this Note in reply shall constitute an Agreement between the United Nations and the Government of the Kingdom of Thailand on this matter.

Accept, Sir, the assurances of my highest consideration.

[*Signed*] Norachit Sinhaseni
Ambassador
Permanent Representative
of Thailand to the United Nations

(*h*) Agreement between the United Nations and the Government of Sudan concerning the status of the United Nations Interim Security Force for Abyei. New York, 1 October 2012*

I. Definitions

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

(*a*) "UNISFA" means the United Nations Interim Security Force for Abyei (UNISFA), established by the Security Council in its resolution 1990 (2011) of 27 June 2011 pursuant to the request contained in the Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement on Temporary Arrangements for the Administration and Security of the Abyei Area concluded at Addis Ababa, Ethiopia, on 20 June 2011 and which has its mandate as set forth in that resolution pursuant to that Agreement, and further expanded pursuant to Security Council resolution 2024 (2011), dated 14 December 2011, to include tasks requested in the Agreement between Government of Sudan and the Government of South Sudan on the Border Monitoring Support Mission, dated 30 July 2011. UNISFA shall consist of:

(i) the "Force Commander (Head of UNISFA)" appointed by the Secretary-General of the United Nations. Any reference to the Force Commander (Head of UNISFA) in this Agreement shall, except in paragraph 26, include any member of UNIFSA to whom he or she delegates a specified function or authority;

(ii) a "civilian element" consisting of United Nations officials and of other persons assigned by the Secretary-General to assist the Force Commander (Head of UNISFA) in the implementation of UNISFA's mandate or made available by participating States to serve as part of UNISFA;

(iii) a "military element" consisting of military personnel made available to UNISFA by participating States at the request of the Secretary-General;

(*b*) a "member of UNISFA" means the Force Commander (Head of UNISFA) and any member of the civilian or military elements;

(*c*) "the Government" means the Government of Sudan;

(*d*) "the Area" means the Abyei Area as defined by the Permanent Court of Arbitration;

(*e*) "Area of Operation" means the Abyei Area as well as the Safe Demilitarized Border Zone (SDBZ) referred to in the Agreement on the Border Monitoring Support Mission between the Government of Sudan and the Government of South Sudan concluded at Addis, Ababa, Ethiopia, on 30 July 2011;

(*f*) "Mission Area" means the Area of Operation and such locations in Sudan and South Sudan where UNISFA shall have established liaison offices, border mechanism sector headquarters and team sites, or logistic bases to support mandated activities in both countries;

(*g*) a "participating State" means a State providing personnel, services, equipment, provisions, supplies, materials and other goods, including spare parts and means of trans-

* Entered into force provisionally on 1 October 2012 upon signature, in accordance with the provisions of article XI.

port, to any of the above-mentioned elements of UNISFA. It is understood that pursuant to the Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement on Temporary Arrangements for the Administration and Security of the Abyei Area concluded at Addis Ababa, Ethiopia, on 20 June 2011, military contingent personnel shall be provided by the Government of Ethiopia;

(*h*) "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, to which the Government of Sudan is a Party, having acceded thereto without reservation on 21 March 1977;

(*i*) "Contractors" means persons, other than members of UNISFA, engaged by the United Nations, including juridical as well as natural persons and their employees and subcontractors, to perform services for UNISFA and/or to supply equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, in support of UNISFA activities. Such Contractors shall not be considered third party beneficiaries to this Agreement;

(*j*) "vehicles" means civilian and military vehicles in use by the United Nations and operated by members of UNISFA, participating States or Contractors in support of UNISFA activities;

(*k*) "vessels" means civilian and military vessels in use by the United Nations and operated by members of UNISFA, participating States or Contractors in support of UNISFA activities;

(*l*) "aircraft" means civilian and military aircraft in use by the United Nations and operated by members of UNISFA, participating States or Contractors in support of UNISFA 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 UNISFA or any member thereof or to Contractors shall apply in the Area and, as necessary for the fulfilment of its activities related to its mandate, elsewhere in Sudan.

III. Application of the Convention

3. UNISFA, its property, funds and assets and its members, including the Force Commander (Head of UNISFA), 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 UNISFA, shall also apply to the property, funds and assets of participating States used in connection with UNISFA.

IV. Status of UNISFA

5. UNISFA 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. UNISFA and its members shall respect all local laws and

regulations and shall refrain from any conduct that is offensive to local customs and values. The Force Commander (Head of UNISFA) shall take all appropriate measures to ensure the observance of these obligations.

6. Without prejudice to the mandate of UNISFA and its international status:

(*a*) the United Nations shall ensure that UNISFA shall conduct its operations 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 their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict;

(*b*) the Government undertakes to treat at all times the military personnel of UNISFA 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 their Additional Protocols of 8 June 1977.

UNISFA and the Governments shall accordingly 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 international nature of UNISFA.

United Nations flag, markings and identification

8. The Government recognizes the right of UNISFA to display within the Area the United Nations flag on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Force Commander (Head of UNISFA). Other flags or pennants may be displayed only in exceptional cases in consultation with the Government.

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

Communications

10. UNISFA shall enjoy the facilities in respect to communications provided in article III of the Convention. 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, the International Telecommunications Convention and applicable national regulations consistent therewith as promulgated and specifically notified to UNISFA by the Government.

11. Subject to the provisions of paragraph 10:

(*a*) UNISFA shall have the right to disseminate information in the Mission Area through official printed materials and publications relating to its mandated activities in support of the implementation of the 20 June and 30 July 2011 Agreements.

(*b*) UNISFA shall have the right to install and operate radio sending and receiving stations, as well as satellite systems, in order to connect appropriate points within the Area of Operations with each other and with United Nations offices in Sudan, South Sudan and in other countries, and to exchange telephone, voice, facsimile and other electronic

data with the United Nations global telecommunications network. Such telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations. The frequencies on which such services may operate shall be decided upon in cooperation with the Government. If no decision has been reached fifteen (15) working days after the matter has been raised by UNISFA with the Government, the Government shall immediately allocate suitable frequencies to UNISFA for this purpose. UNISFA shall be exempt from any taxes on and fees for the allocation of frequencies for this purpose, as well as from any taxes on or fees for their use.

(*c*) UNISFA shall enjoy, within the Area and within Sudan, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of UNISFA, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The Government shall, within fifteen (15) working days of being so requested by the UNISFA, allocate suitable frequencies to UNISFA for this purpose. UNISFA shall be exempt from any taxes on and fees for the allocation of frequencies for this purpose, as well as from any taxes on or fees for their use. 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. Use of the local system of telephone, facsimile and other electronic data shall be charged at the most favourable rate.

(*d*) UNISFA may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNISFA. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNISFA or its members. In the event that postal arrangements applying to private mail of members of UNISFA 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. UNISFA, its members and Contractors, together with their property, equipment, provisions, supplies, materials and other goods, including spare parts, as well as vehicles, vessels and aircraft, including the vehicles, vessels and aircraft of Contractors used exclusively in the performance of their services for UNISFA, shall enjoy full and unrestricted freedom of movement without delay throughout Sudan by the most direct route possible, and as deemed necessary for UNISFA's operations, without the need for travel permits or prior authorization, except in the case of movements by air, which will comply with International Civil Aviation Organization (ICAO) safety regulations and the customary procedural requirements for flight planning and operations within the airspace of Sudan as promulgated and specifically notified to UNISFA by the Civil Aviation Authority of Sudan. This 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 the Area or within Sudan, be coordinated with the Government. Notwithstanding the foregoing, medical evacuation and other emergency flights shall be given prompt clearance and shall in any event be entitled to proceed as soon as the relevant authorities of the Government

have been notified, and the Government shall ensure the safe conduct of such flights within its airspace and in the airspace over the Area. Medical evacuation and other emergency travel by road or waterway shall be given similar priority and the Government shall assure its safe conduct. The Government shall, where necessary, provide UNISFA with maps and other information, including maps of and information on the location of minefields and other dangers and impediments, which may be useful in facilitating UNISFA's movements and ensuring the safety and security of its members.

13. Vehicles and vessels shall not be subject to licensing by the Government, provided that they shall carry third party insurance.

14. UNISFA and its members and Contractors, together with vehicles, vessels and aircraft, including vehicles, vessels and aircraft of Contractors used exclusively in the performance of their services for UNISFA, may use roads, bridges, rivers, canals and other waters, port facilities, airfields and airspace without the payment of any form of monetary contributions, dues, tolls, user fees, airport taxes, parking fees, overflight fees, port fees or charges, including wharfage and compulsory pilotage charges. However, UNISFA and its Contractors will not claim exemption from charges which are in fact charges for services rendered, it being understood that such charges shall be charged at the most favourable rates.

Privileges and immunities of UNISFA

15. UNISFA, 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 UNISFA shall also apply to the property, funds and assets of participating States used in the Area or elsewhere in Sudan in connection with the national contingents serving in UNISFA, as provided for in paragraph 4 of the present Agreement. The Government recognizes in particular:

(*a*) The right of UNISFA, as well as of Contractors, to import, by the most convenient and direct route by sea, land or air, free of duty, taxes, fees and charges and free of other prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNISFA or for resale in the commissaries provided for below. For this purpose, the Government agrees expeditiously to establish, at the request of UNISFA, temporary customs clearance facilities for UNISFA at locations in Sudan convenient for UNISFA not previously designated as official ports of entry for Sudan;

(*b*) The right of UNISFA to establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of UNISFA, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. The Force Commander (Head of UNISFA) 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 UNISFA and shall give due consideration to observations or requests of the Government concerning the operation of the commissaries;

(*c*) The right of UNISFA, as well as of Contractors, to clear ex customs and excise warehouse, free of duty, taxes, fees and charges and free of other prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare

parts and means of transport, which are for the exclusive and official use of UNISFA or for resale in the commissaries provided for above;

(*d*) The right of UNISFA, as well as of Contractors, to re-export or otherwise dispose of such property and equipment, including spare parts and means of transport, as far as they are still usable, and all unconsumed provisions, supplies, materials, 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 Sudan or to an entity nominated by the Government.

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 UNISFA and the Government at the earliest possible date.

V. Facilities for UNISFA and its contractors

Premises required for conducting the operational and administrative activities of UNISFA

16. The Government shall, where possible, provide without cost to UNISFA and in agreement with the Force Commander (Head of UNISFA) for as long as may be required such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNISFA, including the establishment of the necessary facilities for maintaining communications in accordance with paragraph 11. Such premises 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. Without prejudice to the mandate of UNISFA, the Force Commander shall not permit the premises to become a refuge for persons seeking to avoid arrest under the law of Sudan for crimes that they are alleged to have committed and evidence of which has been provided to the Force Commander by the relevant national authorities.

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

18. UNISFA 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 who are not members of UNISFA to such premises.

Provisions, supplies and services, and sanitary arrangements

20. The Government agrees to grant promptly, upon presentation by UNISFA or by Contractors of a bill of landing, airway bill, cargo manifest or packing list, all necessary authorizations, permits and licenses required for the import of equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport,

used in support of UNISFA, including in respect of import by Contractors, free of any restrictions and without the payment of monetary contributions or duties, fees, charges or taxes, including value-added tax. The Government likewise agrees to grant promptly all necessary authorizations, permits and licenses required for the purchase or export of such goods, including in respect of purchase or export by Contractors, free of any restrictions and without the payment of monetary contributions, duties, fees, charges or taxes.

21. The Government undertakes to assist UNISFA 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, fuel, materials and other goods and services purchased locally by UNISFA or by Contractors for the official and exclusive use of UNISFA, the Government shall make appropriate administrative arrangements for the remission or return of any excise, tax or monetary contribution payable as part of the price. The Government shall exempt UNISFA and Contractors from general sales taxes in respect of all local purchases for official use. In making purchases on the local market, UNISFA 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 performance of the services provided by Contractors in support of UNISFA, other than Sudan nationals residing in Sudan, the Government agrees to provide Contractors with facilities for their entry into and departure from Sudan, without delay or hindrance, and for their residence in the Area or if necessary elsewhere in Sudan, as well as for 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, licenses, permits and registrations. Contractors, other than Sudan nationals resident in Sudan, shall be accorded exemption from taxes and monetary contributions in Sudan on services, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, provided to UNISFA, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.

23. UNISFA and the Government shall cooperate with respect to sanitary services and shall extend to each other their fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases and the protection of the local environment, in accordance with international conventions.

Recruitment of local personnel

24. UNISFA may recruit locally such personnel as it requires. Upon the request of the Force Commander (Head of UNISFA), the Government undertakes to facilitate the recruitment of qualified local staff by UNISFA and to accelerate the process of such recruitment. Without prejudice to UNISFA's right to recruit such local personnel as it requires in accordance with the United Nations Staff Regulations and Rules as well as relevant United Nations policies and procedures, in the event the alleged activities of such personnel pose serious concerns for the Governments of Sudan and South Sudan, UNISFA and the two Governments as far as the implementation of the 20 June Agreement is concerned, and UNISFA and the Government of Sudan, as far as the implementation of the 30 July

agreement is concerned, shall cooperate in a spirit of good faith and partnership to address such concerns when they are supported by evidence.

Currency

25. The Government undertakes to make available to UNISFA and to Contractors, against reimbursement in mutually acceptable currency, local currency required for the use of UNISFA, including the pay of its members, at the rate of exchange most favourable to UNISFA and Contractors. UNISFA and Contractors may only exchange foreign currency in Sudan through authorized foreign currency channels.

VI. Status of the members of UNISFA

Privileges and immunities

26. The Force Commander (Head of UNISFA), the Head of the Police and such high-ranking members of UNISFA 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 element to serve with UNISFA, remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention. United Nations Volunteers assigned to serve in UNISFA shall similarly enjoy the privileges and immunities accorded to United Nations officials.

28. Military observers, military liaison officers, United Nations civilian police and civilian personnel other than United Nations officials whose names are for that purpose notified to the Government by the Force Commander (Head of UNISFA) 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 element of UNISFA shall have the privileges and immunities specifically provided for in the present Agreement.

30. Locally recruited personnel of UNISFA shall enjoy the immunities concerning official acts and exemption from taxation and immunity from national service obligations provided for in sections 18 (*a*), (*b*) and (*c*) of the Convention. UNISFA agrees to coordinate with the Government with a view to the deferral of any national service obligations of locally recruited personnel of UNISFA during the period of their employment. UNISFA shall accordingly notify the Government when such employment begins and ends.

31. Members of UNISFA 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 Sudan. 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 UNISFA shall have the right to import free of duty their personal effects in connection with their arrival in the Area. They shall, as applicable, be subject to the laws and regulations of Sudan governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in the Area with UNISFA. Special facilities will be granted by the Government for the speedy processing

of entry and exit formalities for all members of UNISFA, including the military element, upon prior written notification. On departure from Sudan, members of UNISFA may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Force Commander (Head of UNISFA) 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 UNISFA.

33. The Force Commander (Head of UNISFA) 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 Sudan, as applicable, by the members of UNISFA, in accordance with the present Agreement.

Entry, residence and departure

34. The Force Commander (Head of UNISFA) and members of UNISFA shall, whenever so required by the Force Commander (Head of UNISFA), have the right to enter into, reside in and depart from UNISFA's Mission Area through official points of entry in Sudan and South Sudan.

35. The Government undertakes to facilitate the entry into and departure from Sudan, without delay or hindrance, of the Force Commander (Head of UNISFA) and members of UNISFA and shall be kept informed of such movement. For that purpose, upon the request of UNISFA, the Government shall issue without delay and free of charge, multiple entry visas to the Force Commander (Head of UNISFA) and officials of the United Nations assigned to the civilian component of UNISFA, United Nations Volunteers, military observers, military liaison officers, military staff officers, United Nations civilian police and contractors. These visas shall be issued either at a Sudanese Embassy abroad or upon arrival in Sudan and shall be issued in a document recognized for international travel, such as a national passport, a United Nations *laissez-passer* or similar document issued by a competent authority. The Force Commander and members of UNISFA shall be exempt from immigration restrictions and from payment of any fees or charges on entering into or departing from Sudan. They shall also be exempt from any regulations governing the residence of aliens in Sudan, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Sudan.

36. For the purpose of such entry or departure into Sudan, military contingent members of UNISFA shall only be required to have: (*a*) an individual or collective movement order issued by or under the authority of the Force Commander (Head of UNISFA) or any appropriate authority of a participating State; and (*b*) a personal identity card issued in accordance with paragraph 37 of the present Agreement.

Identification

37. The Force Commander (Head of UNISFA) shall issue to each member of UNISFA before or as soon as possible after such member's first entry into the Area, 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 UNISFA.

38. Members of UNISFA as well as locally recruited personnel and Contractors shall be required to present, but not to surrender, their UNISFA identity cards upon demand by the appropriate officials.

Uniforms and arms

39. Military members and United Nations military observers, United Nations military liaison officers and civilian police of UNISFA 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 abovementioned members of UNISFA may be authorized by the Force Commander (Head of UNISFA) at other times. Military members, military observers, and civilian police of UNISFA, United Nations Security Officers and United Nations close protection officers designated by the Force Commander (Head of UNISFA) may possess and carry arms, ammunition and other items of military equipment, including global positioning devices, 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 licenses

40. The Government agrees to accept as valid, without tax or fee, a permit issued by the Force Commander (Head of UNISFA) for the operation by any member of UNISFA, including locally recruited personnel, of any UNISFA vehicles and for the practice of any profession or occupation in connection with the functioning of UNISFA, 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 license.

41. The Government agrees to accept as valid, and where necessary promptly to validate, free of charge and without any restrictions, licenses and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by Contractors exclusively for UNISFA. Without prejudice to the foregoing, the Government further agrees to grant promptly, free of charge and without any restrictions, necessary authorizations, licenses and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels. In this connection, aircraft will comply with national civil aviation regulations of Sudan which have been notified in advance to the extent such regulations are consistent with relevant regulations of the International Civil Aviation Organization.

42. Without prejudice to the provisions of paragraph 39, the Government further agrees to accept as valid, without tax or fee, permits issued by the Force Commander (Head of UNISFA) to members of UNISFA for the carrying or use of firearms or ammunition in connection with the functioning of UNISFA.

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

43. The Force Commander (Head of UNISFA) shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNISFA, including locally recruited personnel. To this end, personnel designated by the Force Command-

er (Head of UNISFA) shall police the premises of UNISFA and areas where its members are deployed. Elsewhere, such personnel shall be employed only subject to arrangements with the Government and in liaison with each of them in so far as such employment is necessary to maintain discipline and order among members of UNISFA.

44. The military police of UNISFA shall have the power of arrest over the military members of UNISFA. Military personnel placed under arrest outside their own contingent areas shall be transferred to the Force Commander (Head of UNISFA) for appropriate disciplinary action. The personnel mentioned in paragraph 43 above may take into custody any other person on the premises of UNISFA. Such other person shall be delivered immediately to the nearest appropriate official 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 UNISFA:

(*a*) When so requested by the Force Commander (Head of UNISFA); or

(*b*) When such a member of UNISFA 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 UNISFA, whereafter the provisions of paragraph 51 shall apply *mutatis mutandis*.

46. When a person is taken into custody under paragraph 44 or paragraph 45 (*b*), UNISFA 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. UNISFA shall in accordance with section 21 of the Convention cooperate at all times with the appropriate authorities of the Government in order to facilitate the proper administration of justice. UNISFA 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 on the terms specified by the authority delivering them. Each party 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 to 46.

Safety and security

48. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel are applied to and in respect of UNISFA, its members and associated personnel and their equipment and premises. In particular:

(*a*) the Government shall take all appropriate measures to ensure the safety, security and freedom of movement of UNISFA, its members and associated personnel and their property and assets. They shall take all appropriate steps to protect members of UNISFA and its associated personnel and 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 UNISFA are inviolable and subject to the exclusive control and authority of the United Nations;

(*b*) if members of UNISFA or its associated personnel are captured, detained or taken hostage 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;

(*c*) the Government agrees to take the necessary steps to ensure the prosecution and punishment of the following crimes under their national laws and to make them punishable by appropriate penalties, taking into account their grave nature:

(i) a murder, kidnapping or other attack upon the person or liberty of any member of UNISFA or its associated personnel;

(ii) a violent attack upon the official premises, the private accommodation or the means of transportation of any member of UNISFA or its associated personnel likely to endanger his or her person or liberty;

(iii) 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;

(iv) an attempt to commit any such attack; and

(v) 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;

(*d*) the Government shall establish their jurisdiction over the crimes set out in paragraph 48 (iii) above:

(i) when the crime was committed in the Area or on the territory of Sudan;

(ii) when the alleged offender is a national of Sudan; or

(iii) when the alleged offender, other than a member of UNISFA, is present in the Area or in the territory of Sudan,

unless the Government has extradited such a person to the State on whose territory the crime was committed, or to the State of his or her nationality, or to the State of his or her habitual residence if he or she is a stateless person, or to the State of the nationality of the victim;

(*e*) the Government shall ensure the prosecution, without exception and without delay, of persons accused of acts described in paragraph 48 (iii) above who are present in the territory of Sudan, as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNISFA or its members or associated personnel 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.

49. Upon the request of the Force Commander (Head of UNISFA), the Government shall provide such security as necessary to protect UNISFA, its members and associated personnel and their equipment during the exercise of their functions. In that connection, the Force Commander shall coordinate closely with the national authorities.

Jurisdiction

50. All members of UNISFA, 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, and for that purpose, such immunity shall continue even after they cease to be members of or employed by or for UNISFA and after the expiration of the other provisions of the present Agreement.

51. Should the Government consider that any member of UNISFA has committed a criminal offence, it shall promptly inform the Force Commander (Head of UNISFA) 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 element, the Force Commander (Head of UNISFA) 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 57 of the present Agreement. In the event that criminal proceedings are instituted in Sudan in accordance with the present Agreement, the relevant courts and authorities shall ensure that the member of UNISFA concerned is brought to trial and tried in accordance with international standards of justice, fairness and due process of law, as set out in the International Covenant on Civil and Political Rights, to which Sudan intends to be a Party;

(*b*) military contingent members of UNISFA shall be subject to the exclusive jurisdiction of the troop contributing State in respect of any criminal offences which may be committed by them in the Area or elsewhere in Sudan.

52. If any civil proceeding is instituted against a member of UNISFA before any court of Sudan, the Force Commander (Head of UNISFA) 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 Force Commander (Head of UNISFA) certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 55 of the present Agreement shall apply;

(*b*) if the Force Commander (Head of UNISFA) certifies that the proceeding is not related to official duties, the proceeding may continue. In that event, the courts and authorities of Sudan shall grant the member of UNISFA concerned sufficient opportunity to safeguard his or her rights in accordance with due process of law. If the Force Commander (Head of UNISFA) certifies that a member of UNISFA is unable, because of his or her official duties or authorized absence, to protect his or her interests in the proceeding, the court shall, at the defendant's request, suspend the proceeding until the elimination of the disability, but for no more than ninety (90) days. Property of a member of UNISFA that is certified by the Force Commander (Head of UNISFA) to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of UNISFA 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

53. The Force Commander (Head of UNISFA) or the Secretary-General of the United Nations shall have the right to take charge of and dispose of the body of a member of UNISFA who dies in the Area or in Sudan, as well as that member's personal property located within the Area or Sudan, in accordance with United Nations procedures. Such action shall be coordinated with the Government, as appropriate.

VII. Limitation of liability of the United Nations

54. Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to UNISFA, 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 55 of the present Agreement, provided that the claim is submitted within six (6) 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 (6) months from the time he or 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 have been approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII. Settlement of disputes

55. Except as provided in paragraph 57, any dispute or claim of a private law character, not resulting from the operational necessity of UNISFA, to which UNISFA or any member thereof is a party and over which the courts of Sudan 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 (30) 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 (30) days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final. The awards of the commission shall be notified to the parties and, if against a member of UNISFA, the Force Commander (Head of UNISFA) or the Secretary-General of the United Nations shall use his or her best endeavours to ensure compliance.

56. Disputes concerning the terms of employment and conditions of service of locally recruited staff members shall be settled by the administrative procedures to be established by the Force Commander (Head of UNISFA), in accordance with the relevant provisions of the United Nations Staff Regulations and Rules then in force. Disputes con-

cerning the terms of service of other personnel engaged locally, such as individual contractors, shall be settled in accordance with the terms specified in their contracts, including arbitration where applicable.

57. All other disputes between UNISFA and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation 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.

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

IX. Supplemental arrangements

59. The United Nations and the Government of Sudan have entered into an exchange of letters dated 1 October 2012 concerning this Agreement, which is set forth in annex hereto.* The Force Commander (Head of UNISFA) may conclude supplemental arrangements to the present Agreement with the Government.

X. Liaison

60. The Force Commander (Head of UNISFA) and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

XI. Miscellaneous provisions

61. Wherever the present Agreement refers to privileges, immunities and rights of UNISFA and to the facilities that Sudan undertakes to provide to UNISFA, or to any obligations of the Government, the Government shall be responsible for the implementation and fulfillment of such privileges, immunities, rights and facilities in its territory, and have the ultimate responsibility for the implementation and fulfillment of such privileges, immunities, rights and facilities by the appropriate local authorities, including those authorities nominated by it to serve in any of the Area institutions.

62. The present Agreement shall enter into force and shall be applied provisionally by the Government upon signature, pending the Government's notification that it has completed internal ratification procedures under the Constitution of Sudan.

63. The present Agreement shall remain in force until the departure of the final element of UNISFA from the Area, except that:

(*a*) the provisions of paragraphs 50, 53, 57 and 58 shall remain in force;

(*b*) the provisions of paragraphs 54 and 55 shall remain in force until all claims made in accordance with the provisions of paragraph 54 have been settled.

* The annex is not reproduced herein.

64. Without prejudice to existing Agreements regarding their legal status and operations in the Area, the provisions of the present Agreement shall apply to offices, funds and programmes of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in the Area and perform functions in relation to UNISFA.

65. Without prejudice to existing Agreements regarding their legal status and operations in the Area, the provisions of the present Agreement may, as appropriate, be extended to specific specialized agencies and related organizations of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in the Area and perform functions in relation to UNISFA, provided that this is done with the written agreement of the Force Commander (Head of UNISFA), the specialized agency or related organization concerned and the Government.

In witness whereof, the undersigned, being the duly authorized plenipotentiary of the Government and the duly appointed representative of the United Nations, have, on behalf of the Parties, signed the present Agreement.

Done at New York on the 1st day of October of the year 2012.

For the United Nations	For the Government of Sudan
[*Signed*] Mr. Hervé Ladsous	[*Signed*] Ambassador Rahamtalla Mohamed Osman
Under-Secretary-General, Department of Peacekeeping Operations	Undersecretary Ministry of Foreign Affairs

3. Other agreements

Memorandum of Understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations Operation in Côte d'Ivoire (UNOCI) and the Prosecutor of the International Criminal Court. New York, 20 and 23 January 2012*

Whereas the United Nations and the International Criminal Court (the "Court") have concluded a Relationship Agreement between the United Nations and the International Criminal Court (the "Relationship Agreement"), which entered into force on 4 October 2004;

Whereas the United Nations General Assembly, in its resolution 58/318 of 13 September 2004, decided that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the Court that may accrue to the United Nations as a result of the implementation of the Relationship Agreement shall be paid in full to the Organization;

Whereas the United Nations and the Court have concluded a Memorandum of Understanding between the United Nations, represented by the United Nations Security Coordinator, and the International Criminal Court Regarding Coordination of Security

* Entered into force on 23 January 2012 by signature, in accordance with article 24.

Arrangements (the "MOU on Security Arrangements"), which entered into force on 22 December 2004;

Whereas the United Nations Operation in Côte d'Ivoire ("UNOCI") was established pursuant to United Nations Security Council resolution 1528 (2004) of 27 February 2004 as a subsidiary organ of the United Nations;

Whereas the United Nations Security Council, in its resolution 2000 (2011) of 27 July 2011, called upon UNOCI, where consistent with its existing authorities and responsibilities, to support national and international efforts to bring to justice perpetrators of grave violations of human rights and international humanitarian law in Côte d'Ivoire;

Whereas the Government of Côte d'Ivoire (the "Government") on 18 April 2003 lodged with the Registrar of the International Criminal Court (the "Registrar") pursuant to article 12, paragraph 3, of the Rome Statute of the International Criminal Court (the "Rome Statute") a declaration accepting the exercise of jurisdiction by the International Criminal Court and reaffirmed its acceptance of the Court's jurisdiction on 14 December 2010;

Whereas the Pre-Trial Chamber of the International Criminal Court on 3 October 2011, authorized the Prosecutor of the International Criminal Court (the "Prosecutor") to commence an investigation into the situation of crimes within the jurisdiction of the Court which may have been committed on the territory of Côte d'Ivoire since 28 November 2010 and whereas the Prosecutor has commenced such an investigation;

Whereas, in article 10 of the Relationship Agreement, the United Nations agrees that, upon the request of the Court, it shall, subject to availability, provide on a reimbursable basis for the purposes of the Court such facilities and services as may be required and whereas it is further stipulated in that article that the terms and conditions on which any such facilities or services may be provided by the United Nations shall, as appropriate, be the subject of supplementary arrangements;

Whereas, in article 15 of the Relationship Agreement, with due regard to its responsibilities and competence under the Charter and subject to its rules as defined under applicable international law, the United Nations undertakes to cooperate with the Office of the Prosecutor (OTP);

Whereas, in article 18 of the Relationship Agreement, the United Nations undertakes, with due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, to cooperate with the Prosecutor of the Court and to enter with the Prosecutor into such arrangements or agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations under article 54 of the Statute;

Whereas the United Nations and the Prosecutor wish to conclude arrangements of the kind foreseen in article 18 of the Relationship Agreement;

Now, therefore, the United Nations represented by UNOCI (hereinafter UNOCI) and the Court represented by the Prosecutor (hereinafter "the Prosecutor") have agreed as follows:

Chapter I. General provisions

Article 1. Purpose

This Memorandum of Understanding (the "MOU") sets out the modalities of cooperation between the United Nations and the Prosecutor in connection with investigations conducted by the Prosecutor into crimes within the jurisdiction of the Court which may have been committed on the territory of Côte d'Ivoire since 28 November 2010.

Article 2. Cooperation

1. The United Nations undertakes to cooperate with the Prosecutor in accordance with the specific modalities set out in this MOU.

2. This MOU may be supplemented from time to time by means of written Agreement between the signatories or their designated representatives setting out additional modalities of cooperation between the United Nations and the Prosecutor.

3. This MOU is supplementary and ancillary to the Relationship Agreement. It is subject to that Agreement and shall not be understood to derogate from any of its terms. In the case of any inconsistency between the provisions of this MOU and those of the Relationship Agreement, the provisions of the Relationship Agreement shall prevail.

Article 3. Basic principles

1. It is understood that UNOCI shall afford the assistance and support provided for in this MOU to the extent feasible within its capabilities and areas of deployment and without prejudice to its ability to discharge its other mandated tasks.

2. The Prosecutor acknowledges that the Government has primary responsibility for the safety and security of all individuals, property and assets present on its territory. Without prejudice to the MOU on Security Arrangements, neither the United Nations nor UNOCI shall be responsible for the safety or security of the staff/officials or assets of the Court or of potential witnesses, witnesses, victims, suspects or accused or convicted persons identified in the course, or as a result, of the Prosecutor's investigations. In particular, nothing in this MOU shall be understood as establishing or giving rise to any responsibility on the part of the United Nations or UNOCI to ensure or provide for the protection of witnesses, potential witnesses or victims identified or contacted by the Prosecutor in the course of his or her investigations.

Article 4. Reimbursement

1. All services, facilities, cooperation, assistance and other support that may be provided to the Prosecutor by the United Nations or by UNOCI pursuant to this MOU shall be provided on a fully reimbursable basis.

2. The Prosecutor shall reimburse the United Nations or UNOCI in full for and in respect of all clearly identifiable direct costs that the United Nations or UNOCI may incur as a result of or in connection with providing services, facilities, cooperation, assistance or support pursuant to this MOU.

3. The Prosecutor shall not be required to reimburse the United Nations or UNOCI for or in respect of:

(*a*) costs that the United Nations or UNOCI would have incurred regardless of whether or not services, facilities, cooperation, assistance or support were provided to the Prosecutor pursuant to this MOU;

(*b*) any portion of the common costs of the United Nations or of UNOCI;

(*c*) depreciation in the value of United Nations or contingent owned equipment, vehicles, vessels or aircraft that might be used by the United Nations or UNOCI in the course of providing services, facilities, cooperation, assistance or support pursuant to this MOU.

Chapter II. Services, facilities and support

Article 5. Administrative and logistical services

1. Pending conclusion of an agreement between the United Nations and the Registry relating to administrative and logistical services, UNOCI is prepared, at the request of the Prosecutor, to provide administrative and logistical services to the Prosecutor, including:

(*a*) access to UNOCI's internet service in areas where available, subject to compliance with UNOCI's information technology protocols, policies and rules, in particular with respect to the use of external applications and the installation of software;

(*b*) with the prior written consent of the Government and on the understanding that the Prosecutor purchases compatible equipment for that purpose, access to UNOCI's internal telecommunications facilities (PABX) and its two-way radio security channels for the purpose of communications within Côte d'Ivoire;

(*c*) storage for items of equipment or property owned by the Office of the Prosecutor on a space-available basis, it being understood that risk of damage to, or deterioration or loss of, such equipment or property during its storage by UNOCI shall lie with the Office of the Prosecutor. The Office of the Prosecutor hereby agrees to release the United Nations, including UNOCI, and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such equipment or property;

(*d*) provided that staff/officials of the Office of the Prosecutor are lawfully entitled to benefit from the same immigration formalities on their entry into and departure from Côte d'Ivoire as are members of UNOCI, assistance to staff/officials of the Office of the Prosecutor in completing those formalities when arriving or departing on flights that are also carrying members of UNOCI. It is understood that it is the Prosecutor's responsibility to ensure that his/her staff/officials are in possession of appropriate travel documents and that UNOCI is not in a position to resolve any travel, immigration or departure problems for staff/officials of the Office of the Prosecutor;

(*e*) on an exceptional basis and with the prior written consent of the Government, temporary or overnight accommodation for staff/officials of the office of the Prosecutor on UNOCI premises, it being understood that UNOCI will consider requests for such services on a case-by-case basis, taking duly into consideration the security of its own members and assets and the availability of alternative suitable accommodation in the vicinity. It

shall be a condition of the accommodation of any staff member/official of the Office of the Prosecutor on UNOCI premises that he or she first signs a waiver of liability as set out in annex A* of this MOU. The Prosecutor shall advise his/her staff/officials concerned of this requirement and shall instruct them to complete and sign that waiver. UNOCI and the Prosecutor shall make practical arrangements for the transmittal to UNOCI of completed and signed waivers at least 5 (five) working days in advance of the arrival of the staff/officials concerned at the UNOCI premises at which they are to be accommodated. The United Nations shall not be responsible in any way for the safety or security of any staff/officials of the Office of the Prosecutor who are accommodated on UNOCI premises pursuant to a request by the Prosecutor.

2. The Prosecutor shall make requests for such services in writing, preferably on a quarterly basis but no less than 30 days before the service is required. In making such requests, the Prosecutor shall specify, the nature of the administrative or logistical services sought, when they are sought and for how long. UNOCI shall inform the Prosecutor in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. In the event that it accedes to a request, UNOCI shall simultaneously inform the Prosecutor in writing of the date on which it is able to commence provision of the services concerned and of their estimated cost.

3. Should UNOCI, in its sole discretion, determine that the provision of the administrative or logistical services requested by the Prosecutor is beyond the staffing capabilities of UNOCI, UNOCI shall nevertheless provide such services if the Prosecutor first agrees to provide UNOCI with the funds needed by it to recruit and pay for the services of additional administrative support staff to assist UNOCI in performing the said administrative or logistical services and provides all related infrastructure and common services requirements necessary to accommodate such staff.

Article 6. Medical services

1. In the event of a medical emergency affecting staff/officials of the Office of the Prosecutor while they are present in UNOCI's areas of deployment, UNOCI undertakes, subject to availability and to the security of its own members and assets, to provide, on request by the Prosecutor:

(*a*) on-site medical support to the staff/officials of the Office of the Prosecutor concerned, and

(*b*) transportation to the nearest available appropriate medical facility, including emergency medical evacuation services to an appropriate country, it being understood that it is the Prosecutor's responsibility to arrange for subsequent hospitalisation and further medical treatment in that country,

it being further understood that, in the provision of such services, staff/officials of the Office of the Prosecutor shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

2. UNOCI shall provide Level I medical services for staff/officials of the Office of the Prosecutor at UNOCI's United Nations-owned medical facilities in Côte d'Ivoire on a space-available basis, it being understood that, in the delivery of such services, staff/

* The annexes are not reproduced herein.

officials of the Office of the Prosecutor shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

3. The Prosecutor shall advise his/her staff/officials travelling to Côte d'Ivoire on official business of the requirement to complete and sign a Release from Liability Form, as set out in annex 8 of this MOU, as a condition to obtaining medical services pursuant to this MOU and shall accordingly instruct them to complete and sign such a form before travelling and to carry a copy with them at all times while in Côte d'Ivoire. UNOCI and the Prosecutor shall make practical arrangements for the transmittal to UNOCI of completed and signed forms in advance of the arrival of the staff/officials concerned in Côte d'Ivoire. Without prejudice to the foregoing, it is nevertheless understood that no staff member or official of the Court will be denied medical services provided for in this MOU solely on the grounds of his or her not having previously completed and signed a Release from Liability Form if, at the time of the medical emergency or of arrival at the medical facility, he or she is physically unable to complete and sign such a form.

Article 7. Transportation

1. At the request of the Prosecutor and subject to prior signature of a waiver of liability by the staff member/official of the Office of the Prosecutor concerned as set out in annex C of this MOU, UNOCI shall provide aircraft passenger services to staff/officials of the Office of the Prosecutor, on a space-available basis aboard its regular flights, it being understood that, in the provision of such services, staff/officials of the Office of the Prosecutor shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

2. UNOCI is prepared to give favourable consideration, when appropriate and on a case-by-case basis, to requests by the Prosecutor for additional ground time at landing sites subject to operational limitations.

3. UNOCI may provide special flights to the Office of the Prosecutor at the Prosecutor's request.

4. At the request of the Prosecutor and with the prior written consent of the Government, UNOCI may provide assistance to the Prosecutor by transporting on UNOCI aircraft, witnesses who are voluntarily cooperating with the Court. UNOCI will consider such requests on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities, seat availability on UNOCI aircraft and the availability of alternative means of transportation, such as commercial flights. Neither UNOCI nor the United Nations shall be responsible for the security or safety of any witnesses whom UNOCI might transport on its aircraft in response to such requests. It shall be a condition to the transportation of any witness on UNOCI aircraft pursuant to such a request that the witness concerned first sign a waiver of liability as set out in annex D of this MOU and that a staff member/official of the Office of the Prosecutor accompany the witness during the entire period of his or her transportation by UNOCI. In the event that it is necessary to protect the identity of a particular witness, the Prosecutor and UNOCI shall consult with each other, at the Prosecutor's request, with a view to putting in place practical arrangements that will make

it possible for the witness concerned to complete the waiver of liability as set out in annex D of this MOU while at the same time protecting his or her identity.

5. At the request of the Prosecutor and subject to the signature of a waiver of liability by the staff member/official of the office of the Prosecutor concerned as set out in annex E of this MOU, UNOCI shall provide transportation in its motor vehicles to staff/officials of the Office of the Prosecutor on a space-available basis, it being understood that, in the provision of such services, staff/officials of the office of the Prosecutor shall be accorded the same priority as is accorded to officials of the specialized agencies and of the ·other related organizations of the United Nations.

6. At the request of the Prosecutor and with the prior written consent of the Government, UNOCI may provide assistance to the Prosecutor by transporting in UNOCI motor vehicles witnesses who are voluntarily cooperating with the Court. The provisions of paragraph 3 of this article shall apply in respect of such requests, *mutatis mutandis*, except that the waiver that is to be signed by any witness who may be transported by UNOCI pursuant to any such request shall be as set out in annex E of this MOU.

7. At the request of the Prosecutor, UNOCI shall provide air or ground transportation services for items of Court-owned equipment or property on a space-available basis, it being understood that, in the provision of such services, items of Court-owned equipment or property shall be accorded the same priority as is accorded to equipment or property of the specialized agencies and of the other related organizations of the United Nations. Risk of damage to, or loss of, items of Court-owned equipment or property during such transportation shall lie with the Prosecutor. The Prosecutor hereby agrees to release the United Nations, including UNOCI, from any claim in respect of damage to, or loss of, such equipment or property.

8. The Prosecutor shall make all requests regarding the provision of transportation by UNOCI under this article in writing. In making such requests, the Prosecutor shall specify for whom or what and the date on, and the locations between, which transportation is sought. UNOCI shall inform the Prosecutor in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. If UNOCI accedes to a request, it shall simultaneously provide the Prosecutor with a written estimate of the cost of the transportation services chargeable to it.

9. Without prejudice to article 4 of this MOU, it is understood that costs that are reimbursable by the Court in connection with services provided pursuant to this article shall include, *inter alia*, those arising from the payment by the United Nations of any additional insurance premiums and of any increase ·in fees for the charter of aircraft and, in the case of any special flights provided pursuant to paragraph 2 of this article, the cost of fuel consumed by United Nations or contingent owned aircraft and of helicopter or aircraft flying hours.

10. UNOCI confirms to the Prosecutor that it is prepared, in principle, to give consideration to requests from the Government to assist the Government in the transportation of:

(*a*) suspects or accused persons, for the purpose of their transfer to the Court;

(*b*) witnesses who have received a summons from the competent authorities of Côte d'Ivoire to attend for questioning, for the purpose of their transfer to the location in Côte d'Ivoire identified in that summons.

Article 8. Police and military support

1. At the request of the Prosecutor and with the prior written consent of the Government, UNOCI may provide police and/or military support to the Prosecutor for the purpose of facilitating his or her investigations in areas where UNOCI military units are already deployed.

2. The Prosecutor shall make requests for such support in writing. When making such requests, the Prosecutor shall provide such information as the location, date, time and nature of the investigation that is to be conducted and the number of staff/officials of the Office of the Prosecutor involved, as well as an evaluation of the attendant risks of which he or she may be aware.

3. UNOCI will review such requests on a case-by-case basis, taking into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities, the consistency of the support requested with its mandate and Rules of Engagement and the capacity of the Government to provide adequate security for the investigation concerned. UNOCI shall inform the Prosecutor in writing whether or not it accedes to such requests as soon as possible and in any event within 10 (ten) working days of their receipt.

4. In the event that UNOCI agrees to a request. UNOCI shall, on the basis of the information provided by the Prosecutor, determine in an operational order the extent, nature and duration of the military support to be provided, together with an estimate of the total reimbursable cost of the operation chargeable to the Prosecutor. The Prosecutor shall acknowledge in writing his or her agreement to that operational order.

5. Any military units and equipment that UNOCI might deploy pursuant to such an order shall remain exclusively and at all times under UNOCI's command and control.

6. Without prejudice to article 4 of this MOU, it is understood that the costs that are reimbursable by the Court in connection with support provided pursuant to this article shall include, *inter alia*, the cost of fuel consumed by United Nations or contingent owned vehicles, vessels or aircraft and of any helicopter or aircraft flying hours.

Chapter III. Cooperation and legal assistance

Article 9. Access to documents and information held by UNOCI

1. Requests by the Prosecutor for access to documents held by UNOCI are governed by article 18 of the Relationship Agreement.

2. Requests by the Prosecutor for access to such documents shall be communicated by the Prosecutor in writing to the Under-Secretary-General for Peacekeeping Operations and simultaneously copied to the Legal Counsel of the United Nations and to the Special Representative of the Secretary-General for Côte d'Ivoire.

3. Such requests shall identify with a reasonable degree of specificity the document or the category or categories of documents to which the Prosecutor wishes to be afforded access, shall explain succinctly how and why such document or documents or the information that they contain is relevant to the conduct of the Prosecutor's investigations and explain why that information cannot reasonably be obtained by other means or from some other source.

4. The Under-Secretary-General for Peacekeeping Operations shall respond to the Prosecutor in writing as soon as possible and in any event within 30 (thirty) days of the receipt of the request.

5. The United Nations, acting through the Under-Secretary-General for Peacekeeping Operations, may, on its own initiative make available to the Prosecutor documents held by UNOCI that the United Nations may have reason to believe may be of use to the Prosecutor in connection with his or her investigations.

6. The United Nations shall endeavour, wherever possible, to accede to the Prosecutor's requests by providing the document or documents to which the Prosecutor wishes to be afforded access and by not placing any conditions, limitations, qualifications or exceptions on their disclosure.

7. Where a document requested contains information the disclosure of which would:

(*a*) endanger the safety or security of any person, or

(*b*) prejudice the security or proper conduct of any operation or activity of the United Nations or of its specialised agencies or related organizations or of its implementing partners or executing agencies, or

(*c*) violate an obligation of confidentiality owed by the United Nations to a third party, or

(*d*) violate or interfere with the privacy of a third person, or

(*e*) undermine or compromise the free and independent decision-making processes of the United Nations, or

(*f*) endanger the security of any Member State of the United Nations,

the United Nations shall nevertheless endeavour, wherever possible, to provide the document concerned to the Prosecutor. To this end, the United Nations may request the order by the Court of appropriate measures of protection in respect of the document or, in the absence of such measures, may place conditions, limitations, qualifications or exceptions on the disclosure of the document or on specified parts of its contents, including the introduction of redactions, for the purpose of preventing the disclosure of information of one or other of the kinds described above in a manner that would endanger the safety or security of any person or be detrimental to the interests of the United Nations or its Member States or place the United Nations in violation of its obligations.

8. Where it considers there is no other practicable way in which it can respond positively to the Prosecutor's request, the United Nations may, on an exceptional basis, provide documents to the Prosecutor subject to the arrangements and protections provided for in article 18, paragraph 3, of the Relationship Agreement. In such an eventuality, the provisions set out in annex F to this MOU shall apply.

9. It is understood that, in the normal course of events, the United Nations will provide the Prosecutor with photocopies of documents held by UNOCI and not with original versions. The United Nations is, nevertheless, prepared, in principle, to make available to the Prosecutor, on a temporary basis, the original versions of specific documents, should the Prosecutor indicate that such original versions are needed for evidentiary or forensic reasons. Requests for such original versions shall be communicated by the Prosecutor

in writing to the Under-Secretary-General for Peacekeeping Operations and simultaneously copied to the Legal Counsel of the United Nations and to the Special Representative of the Secretary-General for Côte d'Ivoire. The United Nations undertakes to endeavour to accede to such requests whenever possible. It is nevertheless understood that the United Nations shall be free to decline any such request or to accede to it subject to such conditions, limitations, qualifications or exceptions as it might deem appropriate. It is further understood that the agreement of the United Nations to make available original versions of documents may only be given in writing, by the Under-Secretary-General for Peacekeeping Operations.

10. For the purposes of this article, documents are understood to include communications, notes and records in written form, including records of meetings and transcripts of audio or video-taped conversations, facsimile transmissions, electronic mail, computer files and maps, whether generated by members of UNOCI or received by UNOCI from third parties.

11. References in this article to documents are to be understood to include other recorded forms of information, which may be in the form, *inter alia*, of audiotapes, including audiotapes of radio intercepts, video recordings, including video recordings of crime scenes and of statements by victims and potential witnesses, and photographs.

12. Without prejudice to article 4 of this MOU, it is understood that costs that are reimbursable by the Court in connection with assistance provided pursuant to this article shall include, *inter alia*:

(*a*) the costs of copying documents provided to the Prosecutor;

(*b*) the costs of transmitting those copies to the Prosecutor;

(*c*) costs incurred in, or necessarily incidental to, making available and transmitting to the Prosecutor original versions of documents pursuant to paragraph 9 of this article.

13. References in paragraphs 4, 5 and 9 of this article to the Under-Secretary-General for Peacekeeping Operations are to be understood to include the Assistant Secretary-General for Peacekeeping Operations.

14. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutor and the Heads of Divisions.

Article 10. Interview of members of UNOCI

1. The United Nations undertakes to cooperate with the Prosecutor by taking such steps as are within its powers and capabilities to make available for interview by the Prosecutor members of UNOCI whom there is good reason to believe may have information that is likely to be of assistance to the Prosecutor in the conduct of his or her investigations and that cannot reasonably be obtained by other means or from some other source. It is understood that, in the case of interviews conducted on the territory of Côte d'Ivoire, UNOCI will only so cooperate with the prior written consent of the Government.

2. Requests by the Prosecutor to interview members of UNOCI shall be communicated in writing to the Under-Secretary-General for Peacekeeping Operations and simultaneously copied to the Legal Counsel of the United Nations and to the Special Representative of the Secretary-General for Côte d'Ivoire.

3. Such requests shall identify the member of UNOCI whom the Prosecutor wishes to interview, identify with a reasonable degree of specificity the category or categories of information that the Prosecutor believes that the member of UNOCI concerned might be able to provide, explain succinctly how and why such information is relevant to the conduct of the Prosecutor's investigations and explain why that information cannot reasonably be obtained by other means or from some other source.

4. The Under-Secretary-General for Peacekeeping Operations shall respond to the Prosecutor in writing as soon as possible and in any event within 30 (thirty) days of the receipt of the request.

5. It is understood that police or military members of national contingents assigned to the police or military component of UNOCI remain subject to the police or military rules, regulations and discipline of the State contributing the contingent to which they belong. The Prosecutor accordingly understands that, once he or she has obtained the response of the Under-Secretary-General for Peacekeeping Operations to a request to interview a police or military member of a national contingent assigned to UNOCI's police or military component, he or she may need to approach the competent authorities of the State contributing the contingent to which that member of UNOCI belongs with a view to arranging for him or her to be interviewed.

6. Whenever so requested by the Under-Secretary-General for Peacekeeping Operations, the Prosecutor shall accept the presence of a representative of the United Nations at and during the interview of a member of UNOCI. The Under-Secretary-General for Peacekeeping Operations shall provide reasons in writing for any such request.

7. The Prosecutor shall, as soon as possible after the interview of a member of UNOCI, provide both the Under-Secretary-General for Peacekeeping Operations and the member of UNOCI concerned with a written transcript of the interview or the interview record.

8. It is understood that, unless otherwise expressly stated by the Under-Secretary-General for Peacekeeping Operations, members of UNOCI who may be interviewed by the Prosecutor are not at liberty to disclose to the Prosecutor information the disclosure of which would:

(*a*) endanger the safety or security of any person;

(*b*) prejudice the security or proper conduct of any operation or activity of the United Nations or of its specialised agencies or related organizations or of its implementing partners or executing agencies;

(*c*) violate an obligation of confidentiality owed by the United Nations to a third party;

(*d*) violate or interfere with the privacy of a third person;

(*e*) undermine or compromise the free and independent decision-making processes of the United Nations;

(*f*) endanger the security of any Member State of the United Nations.

9. In the event that a member of UNOCI who is interviewed by the Prosecutor discloses to the Prosecutor during the interview without specific authorization from the Under-Secretary-General for Peacekeeping Operations information of one or other of the

kinds specified in the preceding paragraph, the Prosecutor, at the request of and in consultation with the Under-Secretary-General for Peacekeeping Operations, shall take the necessary measures to ensure the confidentiality of that information, to restrict its availability within his or her Office on a strictly "need to know" basis and, as necessary, to request that necessary measures be taken by the Court to prevent its onward disclosure. In the event that the Prosecutor him/herself has reason to believe that the member of UNOCI concerned has disclosed such information during the interview, he or she shall immediately so notify the Under-Secretary-General for Peacekeeping Operations and, pending his or her response, shall take necessary measures to ensure the confidentiality of that information.

10. It is understood that members of UNOCI who may be interviewed by the Prosecutor are not at liberty to provide the Prosecutor with copies of any confidential documents of the United Nations that might be in their possession. It is further understood that, if the Prosecutor wishes to obtain copies of such documents, he or she should direct any request to that end to the Under-Secretary-General for Peacekeeping Operations in accordance with article 9, paragraph 2, of this MOU. At the same time, it is understood that, unless otherwise specified by the Under-Secretary-General for Peacekeeping Operations, members of UNOCI are at liberty to refer to such documents and, subject to paragraph 8 of this article, to disclose their contents in the course of their interview.

11. The provisions of this article shall also apply with respect to the interview by the Prosecutor of:

(*a*) former members of UNOCI;

(*b*) contractors engaged by the United Nations or by UNOCI to perform services or to supply equipment, provisions, supplies, materials or other goods in support of UNOCI's activities ("contractors");

(*c*) employees of such contractors ("employees of contractors").

12. The Court shall bear all costs incurred in connection with the interview of members of UNOCI.

13. The provisions of this article shall not apply to cases in which the Prosecutor wishes to interview a member of UNOCI who the Prosecutor has reason to believe may be criminally responsible for a crime within the jurisdiction of the Court.

14. References in paragraphs 4, 5, 6, 8 and 9 of this article to the Under-Secretary-General for Peacekeeping Operations are to be understood to include the Assistant Secretary-General for Peacekeeping Operations.

15. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutor and the Heads of Divisions.

Article 11. Testimony of members of UNOCI

1. Requests by the Prosecutor for the testimony of officials of the United Nations assigned to serve with UNOCI are governed by article 16 of the Relationship Agreement. That article shall also apply *mutatis mutandis* with respect to requests by the Prosecutor for the testimony of other members of UNOCI, including United Nations Volunteers, military observers, military liaison officers, civilian police, experts performing missions for the United Nations and military members of national contingents assigned to serve with UNOCI's military component.

2. Requests by the Prosecutor for the testimony of members of UNOCI shall be communicated in writing to the Legal Counsel of the United Nations and shall be simultaneously copied to the Under-Secretary-General for Peacekeeping Operations and to the Special Representative of the Secretary-General for Côte d'Ivoire. The Legal Counsel of the United Nations or the Assistant Secretary-General for Legal Affairs shall respond to the Prosecutor in writing as soon as possible and in any event within 30 (thirty) days of the receipt of the request.

3. Requests shall identify the member of UNOCI whom the Prosecutor wishes to testify, identify with a reasonable degree of specificity the matter or matters on which the Prosecutor wishes the member of UNOCI concerned to testify, explain succinctly how and why such testimony is relevant to the Prosecutor's case and explain why testimony on the matter or matters concerned cannot reasonably be obtained from some other source.

4. It is understood that only the Legal Counsel of the United Nations or the Assistant Secretary-General for Legal Affairs may, on behalf of the Secretary-General, can execute the waiver contemplated in article 16 of the Relationship Agreement in respect of a member of UNOCI. It is further understood that any such waiver must be executed in writing.

5. It is understood that police or military members of national contingents assigned to the police or military component of UNOCI remain subject to the police and military rules, regulations and discipline of the State contributing the contingent to which they belong. The Prosecutor accordingly understands that, once he or she has obtained the response of the Legal Counsel of the United Nations or of the Assistant Secretary-General for Legal Affairs to a request for the testimony of a police or military member of a national contingent assigned to UNOCI's police or military component, he or she may need to approach the competent authorities of the State contributing the contingent to which that member of UNOCI belongs with a view to arranging for his or her testimony.

6. The provisions of this article shall also apply with respect to the testimony of:

(*a*) former members of UNOCI;

(*b*) contractors;

(*c*) employees of contractors.

7. The Court shall bear all costs incurred in connection with the testimony of members of UNOCI.

8. The provisions of this article shall not apply to cases in which the Court seeks to exercise its jurisdiction over a member of UNOCI who may be alleged to be criminally responsible for a crime within the jurisdiction of the Court.

9. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutor and the Heads of Divisions.

Article 12. Assistance in tracing witnesses

1. At the request of the Prosecutor and with the prior written consent of the Government, UNOCI may assist the Prosecutor by taking such steps as may be within its powers and capabilities to identify, trace and locate witnesses or victims not members of UNOCI whom the Prosecutor wishes to contact in the course of his or her investigations and who there is good reason to believe may be present in UNOCI's areas of deployment.

UNOCI will consider such requests by the Prosecutor on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities and the risks to victims or witnesses that may arise from any attempt by UNOCI to identify, trace or locate them, as well as any attendant risks to their families, dependants or third parties.

2. The Prosecutor shall make requests for assistance under this article in writing. When making such requests, he or she shall provide UNOCI in writing with an evaluation of the risks of which he or she is aware that are likely to be attendant on any attempt to identify, trace or locate the victims or witnesses concerned. UNOCI shall inform the Prosecutor in writing whether or not it accedes to a request as soon as possible and in any event within ten (10) working days of its receipt.

3. UNOCI shall not be responsible for the safety or security of any witnesses or victims whom it may endeavour to identify and locate pursuant to this article, nor shall it be responsible for the safety or security of their families or dependants or of any third parties.

Article 13. Assistance in respect of interviews

1. At the request of the Prosecutor and with the prior written consent of the Government, UNOCI may agree to allow the Prosecutor to conduct on UNOCI premises interviews of witnesses who are not members of UNOCI and who are voluntarily cooperating with the Prosecutor in the course of his or her investigations. UNOCI will consider such requests by the Prosecutor on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities and the availability of suitable alternative locations for the conduct of such interviews.

2. The Prosecutor shall make requests for assistance under this article in writing. When making such requests, he or she shall explain in writing why the use of UNOCI premises is being sought and shall provide UNOCI in writing with an evaluation of the risks attendant on the interview of the witness concerned of which he or she may be aware. UNOCI shall inform the Prosecutor in writing whether or not it accedes to a request as soon as possible and in any event within ten (10) working days of its receipt.

3. It shall be a condition to the interview of any witness on UNOCI premises pursuant to this article that a staff member/official of the Office of the Prosecutor accompanies the witness throughout the time that he or she is present on UNOCI premises.

4. Neither UNOCI nor the United Nations shall be responsible for the security or safety of any staff/officials of the Office of the Prosecutor or of any witnesses while they are on UNOCI premises for the purpose of the conduct of interviews pursuant to this article.

Article 14. Assistance in the preservation of physical evidence

1. At the request of the Prosecutor and with the prior written consent of the Government, UNOCI may assist the Prosecutor, by storing items of physical evidence for a limited period of time in secure rooms, closets or safes on UNOCI premises.

2. The Prosecutor shall make such requests in writing. In making such requests, the Prosecutor shall specify the items of physical evidence whose storage is sought, where their storage is sought and for how long. UNOCI shall inform the Prosecutor in writing

whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. In the event that it accedes to a request, UNOCI shall simultaneously inform the Prosecutor of the date on which storage can be provided, where and for how long.

3. Notwithstanding UNOCI's previous accession to a request to store a particular item of· evidence, UNOCI may, at any time and upon giving reasonable notice in writing, require the Prosecutor to remove that item from its premises.

4. It is understood that the risk of damage to, or deterioration or loss of items of physical evidence during their storage by UNOCI shall lie with the Prosecutor. The Prosecutor hereby agrees to release the United Nations, including UNOCI and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such items of physical evidence.

Article 15. Arrests, searches and seizures and securing of crime scenes

1. UNOCI confirms to the Prosecutor that it is prepared, in principle and consistently with its mandate, to give consideration, on a case-by-case basis, to requests from the Government to assist the Government in:

(*a*) carrying out the arrest of persons whose arrest is sought by the Court;

(*b*) securing the appearance of a person whose appearance is sought by the Court;

(*c*) carrying out the search of premises and seizure of items whose search and seizure are sought by the Court;

it being understood that UNOCI, if and when it accedes to such requests to assist the Government, does not in any way take over responsibilities that lie with the Government.

2. UNOCI confirms to the Prosecutor that it is prepared, in principle, and consistently with its mandate, to secure the scenes of possible crimes within the jurisdiction of the Court (crime scenes) which it may encounter in the course of carrying out its mandate, pending arrival of the relevant authorities of Côte d'Ivoire. UNOCI shall notify the Prosecutor as soon as possible of the existence of any such crime scene. UNOCI further confirms to the Prosecutor that it is prepared, in principle where consistent with its existing authorities and responsibilities, to give consideration to requests for assistance whether from the Prosecutor or the Government to assist the Government in securing and preserving the integrity of such crime scenes, pending arrival of staff/officials of the Office of the Prosecutor, and thereafter, if requested by the Government or the Prosecutor.

Chapter IV. Security

Article 16. Security arrangements

1. The provisions of this article are supplemental and additional to those of the MOU on Security Arrangements and shall be understood to be without prejudice to, and not to derogate in any manner from, its terms. The Special Representative of the Secretary-General for Côte d'Ivoire is the Designated Official for Côte d'Ivoire within the meaning of that expression as it appears in the Memorandum of Understanding.

2. At the request of the Prosecutor, UNOCI shall, upon presentation of a valid form of identification, issue to staff/officials of the Office of the Prosecutor, identity cards grant-

ing them access to UNOCI facilities as official visitors for the duration of their mission in Côte d'Ivoire. The Prosecutor shall make such requests in writing, at least five (5) working days in advance of the arrival of the staff/officials concerned in Côte d'Ivoire.

3. UNOCI shall permit staff/officials of the Office of the Prosecutor to attend security-related briefings provided by UNOCI, as and when deemed appropriate by the Special Representative of the Secretary-General for Côte d'Ivoire.

4. UNOCI shall, in case of emergency, provide temporary shelter within UNOCI premises to staff/officials of the Office of the Prosecutor who present themselves at such premises and request protection, pending their emergency evacuation or relocation to another country, if necessary.

5. UNOCI confirms to the Prosecutor that, subject to the security of its own members and assets, it is prepared to provide temporary shelter within UNOCI premises to witnesses who are not members of UNOCI and who are cooperating with the Prosecutor in the course of his or her investigations in the event that they come under imminent threat of physical violence and present themselves at such premises and request protection.

6. At the request of the Prosecutor, UNOCI may undertake operations of a limited character to extract witnesses who are not members of UNOCI and who are cooperating with the Prosecutor in the course of his or her investigations in the event that they come under imminent threat of physical violence. UNOCI will review such requests on a case-by-case basis, taking into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities, the consistency of the proposed operation with its mandate and Rules of Engagement and the capacity of the Government to provide security for the witnesses concerned. UNOCI shall inform the Prosecutor as soon as possible whether or not it accedes to his or her request.

7. Without prejudice to article 4 of this MOU, it is understood that the costs that are reimbursable by the Court in connection with support provided pursuant to the preceding paragraph shall include, *inter alia*, the cost of fuel consumed by United Nations or contingent owned vehicle, vessels or aircraft and of any helicopter or aircraft flying hours.

Chapter V. Implementation

Article 17. Payments

1. UNOCI shall submit invoices to the Prosecutor for the provision of services, facilities, cooperation, assistance and support under this MOU. It shall do so promptly and, in any event, within 60 (sixty) days of the date on which the services, facilities, cooperation, assistance or support concerned was provided.

2. The Prosecutor shall make payment against such invoices within 30 (thirty) days of the date printed on them.

3. Payment shall be made in United States Dollars, by means of bank transfer made payable to the United Nations bank account specified on the invoice concerned.

Article 18. Communications

1. UNOCI and the Prosecutor shall each designate official contact persons responsible:

(*a*) for making, receiving and responding to requests under articles 5, 7, 8, 12, 13, 14 and 16 of this MOU for administrative and logistical services, transportation, military support, assistance in tracing witnesses, assistance in respect of interviews, assistance in the preservation of physical evidence, the issuance of identity cards and the extraction of witnesses;

(*b*) for transmitting and receiving medical release forms under article 6, paragraph 4, of this MOU;

(*c*) for submitting and receiving invoices and for making and receiving payments under article 17 of this MOU.

These designated official contact persons shall be the exclusive channels of communication on these matters between UNOCI and the Prosecutor.

2. All requests, notices and other communications provided for or contemplated in this MOU shall be made in writing, either in English or in French.

3. All requests and communications provided for or contemplated in this MOU shall be treated as confidential, unless the Party making the request or communication specifies otherwise in writing. The United Nations, UNOCI, and the Prosecutor shall restrict the dissemination and availability of such requests and communications and the information that they contain within their respective organizations or offices on a strictly "need to know" basis, it being understood that the Prosecutor may nevertheless share such requests with the Chambers on an ex parte basis, should this become necessary. The Parties shall also take the necessary steps to ensure that those handling such requests and communications are aware of the obligation strictly to respect their confidentiality.

Article 19. Consent of the Government

It shall be the responsibility of the Prosecutor to obtain the prior written consent of the Government, as provided for in article 5 paragraph 1 (*b*) and (*e*), article 7, paragraphs 4 and 6, article 8, paragraph 1, article 10, paragraph 1, article 12, paragraph 1, article 13, paragraph 1, and article 14.

Article 20. Planning

The Prosecutor shall regularly prepare and submit to UNOCI a rolling work plan for the three months ahead, indicating the nature and scope of the services, facilities, cooperation, assistance and support that it anticipates requesting from UNOCI pursuant to articles 5, 7, 8, 9, 11, 13, 14 and 15 of this MOU, as well as the size, timing, location and duration of each of the missions that it anticipates sending to Côte d'Ivoire during that time.

Article 21. Consultation

1. The Parties shall keep the application and implementation of this MOU under close review and shall regularly and closely consult with each other for that purpose.

2. The Parties shall consult with each other at the request of either Party on any difficulties, problems or matters of concern that may arise in the course of the application and implementation of this MOU.

3. Any differences between the Parties arising out or in connection with the implementation of this MOU shall be settled by consultations between the Deputy Prosecutor and the Assistant-Secretary-General for Peacekeeping Operations. If such differences are not settled by such consultations, they shall be referred to the Prosecutor and to the Under-Secretary-General for Peacekeeping Operations for resolution.

Article 22. Indemnity

1. Each Party shall, at its sole cost and expense, be responsible for resolving, and shall indemnify, hold and save harmless, and defend the other Party, its officials, agents, servants and employees from and against, all suits, proceedings, claims, demands, losses and liability of any nature or kind, including, but not limited to, all litigation costs, attorneys' fees, settlement payments, damages and all other related costs and expenses (the "Liability"), brought by its officials, agents, servants or employees, based on, arising out of, related to, or in connection with the implementation of this MOU, unless the Liability results from the gross negligence or wilful misconduct of the other Party or of the other Party's officials, agents, servants or employees.

2. The Court shall, at its sole cost and expense, be responsible for resolving, and shall indemnify, hold and save harmless, and defend the United Nations, including UNOCI, and their officials, agents, servants and employees from and against, all suits, proceedings, claims, demands, losses and liability of any nature or kind, including, but not limited to, all litigation costs, attorneys' fees, settlement payments, damages and all other related costs and expenses (the "Liability"), brought by third parties, including, but not limited, to invitees of the Office of the Prosecutor, witnesses, victims, suspects and accused, convicted or sentenced persons or any other third parties, based on, arising of, related to, or in connection with the implementation of this MOU, unless the Liability results from the gross negligence or wilful misconduct of the United Nations, including UNOCI, or their officials, agents, servants or employees.

Chapter VI. Miscellaneous and final provisions

Article 23. Assistance to UNOCI

This MOU does not apply in respect of any activities that the Prosecutor might undertake, at the request of the Special Representative of the Secretary-General for Côte d'Ivoire, in order to assist UNOCI in conducting its own investigations into a particular matter or incident. The terms on which any such assistance is given shall be the subject of separate arrangements between the Prosecutor and UNOCI.

Article 24. Final provisions

1. This MOU shall enter into force on the date on which it is signed by both of the Parties.

2. This MOU shall remain in force indefinitely, notwithstanding the eventual termination of UNOCI's mandate.

3. This MOU may be modified or amended by written agreement between the Parties.

4. The annexes to this MOU are an integral part of this MOU.*

In witness whereof, the duly authorized representatives of the Parties have affixed their signatures.

For and on behalf of the United Nations

[*Signed*] Hervé Ladsous
Under-Secretary-General for Peacekeeping Operations

Date: 23 January 2012

[*Signed*] Susana Malcorra
Under-Secretary-General for Field Support

Date: 23 January 2012

For and on behalf of OTP

[*Signed*] Luis Moreno-Ocampo
Prosecutor

Date: 20 January 2012

4. United Nations Development Programme

(*a*) Agreement between the Republic of Nauru and the United Nations Development Programme. Suva, 3 February 2012**

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

Whereas the Government of the Republic of Nauru (hereinafter called "the Government") wishes to request assistance from the UNDP for the benefit of its people;

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

Article I. Scope of this Agreement

1. This Agreement embodies the basic conditions under which the UNDP and its Executing Agencies shall assist the Government in carrying out its development projects, and under which such UNDP-assisted projects shall be executed. It shall apply to all such UNDP assistance and to such project Documents or other instruments (hereinafter called "Project Documents") as the Parties may conclude to define the particulars of such assistance and the respective responsibilities of the Parties and the Executing Agency hereunder in more detail in regard to such projects.

* The annexes are not reproduced herein. For the text of the annexes, see United Nations, *Treaty Series*, No. II-1358.

** Entered into force on 3 February 2012 by signature, in accordance with the provisions of article XIII.

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

Article II. Forms of assistance

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

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

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

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

(*d*) Equipment and supplies not readily available in the country as agreed by the Government and listed in the project document concerned;

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

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

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

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

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

4. (*a*) The UNDP may maintain a permanent mission, headed by a resident representative, based in or for the Republic of Nauru to represent the UNDP therein and be the

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

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

Article III. Execution of projects

1. The Government shall remain responsible for its UNDP-assisted development projects and the realization of their objectives as described in the relevant Project Documents, and shall carry out such parts of such projects as may be stipulated in the provisions of this Agreement and such Project Documents. The UNDP undertakes to complement and supplement the Government's participation in such projects through assistance to the Government in pursuance of this Agreement and the Work Plan forming part of such Project Documents, and through assistance to the Government in fulfilling its intent with respect to investment follow-up. The Government shall inform UNDP of the Government Cooperating Agency directly responsible for the Government's participation in each UNDP-assisted project. Without prejudice to the Government's overall responsibility for its projects, the Parties may agree that an Executing Agency shall assume primary responsibility for execution of a project in consultation and Agreement with the Cooperating Agency, and any arrangements to this effect shall be stipulated in the project Work Plan forming part of the Project Document together with arrangements, if any, for transfer of such responsibility in the course of project execution to the Government or to an entity designated by the Government. Project Documents shall be formulated jointly and shall be executed by both parties.

2. Compliance by the Government with any prior obligations agreed to be necessary or appropriate for UNDP assistance to a particular project shall be a condition of performance by the UNDP and the Executing Agency of their responsibilities with respect to that project. Should provision of such assistance be commenced before such prior obligations

have been met, it may be terminated or suspended without notice and at the discretion of the UNDP.

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

4. As may be provided for in the project document, the Cooperating Agency shall as appropriate and in consultation with the UNDP and the Executing Agency assign a director for each project who shall perform such functions as are assigned to him by the Cooperating Agency. The Executing Agency shall as appropriate and in consultation with UNDP and the Government appoint a Project Coordinator responsible to the Executing Agency to oversee the Executing Agency's participation in the project at the project level. The Project Coordinator shall supervise and co-ordinate activities of experts and other Executing Agency personnel and be responsible for the on-the-job training of national Government counterparts. The Project Coordinator shall be responsible for the management and efficient utilization of all UNDP-financed inputs, including equipment provided to the project.

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

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

7. Technical and other equipment, materials, supplies and other property financed or provided by the UNDP shall belong to the UNDP unless and until such time as ownership thereof is transferred, on terms and conditions mutually agreed upon between the Government and the UNDP, to the Government or to an entity nominated by it.

8. Patent rights, copyright rights, and other similar rights to any discoveries or work resulting from UNDP assistance under this Agreement shall belong to the UNDP. Unless otherwise agreed by the Parties in each case, however, the Government shall have the right to use any such discoveries or work within the country free of royalty or any charge of similar nature.

Article IV. Information concerning projects

1. The Government shall furnish the UNDP with such relevant reports, maps, accounts, records, statements, documents and other information as it may request concerning any UNDP-assisted project, its execution or its continued feasibility and sound-

ness, or concerning the compliance by the Government with its responsibilities under this Agreement or Project Documents.

2. The UNDP undertakes that the Government shall be kept currently informed of the progress of its assistance activities under this Agreement. Either party shall have the right, at any time, to observe the progress of operations on UNDP-assisted projects.

3. The Government shall, subsequent to the completion of a UNDP-assisted project, make available to the UNDP at its request information as to benefits derived from and activities undertaken to further the purposes of that project, including information necessary or appropriate to its evaluation or to evaluation of UNDP assistance, and shall consult with and permit observation by the UNDP for this purpose.

4. Any information or material which the Government is required to provide to the UNDP under this article shall be made available by the Government to an Executing Agency at the request of the Executing Agency concerned.

5. The Parties shall consult each other regarding the publication, as appropriate, of any information relating to any UNDP-assisted project or to benefits derived therefrom. However, any information relating to any investment-oriented project may be released by the UNDP to potential investors, unless and until the Government has requested the UNDP in writing to restrict the release of information relating to such project.

Article V. Participation and contribution of Government in execution of project

1. In fulfilment of the Government's responsibility to participate and cooperate in the execution of the projects assisted by the UNDP under this Agreement, it shall contribute the following in kind to the extent detailed in relevant Project Documents:

(*a*) Local counterpart professional and other services, including national counterparts to operational experts;

(*b*) Land, buildings, and training and other facilities available or produced within the country; and

(*c*) Equipment, materials and supplies available or produced within the country.

2. Whenever the provision of equipment forms part of UNDP assistance to the Government, the latter shall meet charges relating to customs clearance of such equipment, its transportation from the port of entry to the project site together with any incidental handling or storage and related expenses, and its installation and maintenance. The Government shall be responsible for any loss or damage after delivery to project site. UNDP shall have no responsibility therefor.

3. The Government shall also meet the salaries of Government trainees and Government recipients of fellowships during the period of their fellowships. Salaries of other trainees and recipients shall be met by UNDP out of the project budget.

4. If so provided in the Project Document, the Government shall pay, or arrange to have paid, to the UNDP or an Executing Agency the sums required, to the extent specified in the Project Budget of the Project Document, for the provision of any of the items enumerated in paragraph 1 of this article, whereupon the Executing Agency shall obtain the necessary items and account annually to the UNDP for any expenditures out of payments made under this provision.

5. Monies payable to the UNDP under the preceding paragraph shall be paid to an account designated for this purpose by the Secretary-General of the United Nations and shall be administered in accordance with the applicable financial regulations of the UNDP.

6. The cost of items constituting the Government's contribution to the project and any sums payable by the Government in pursuance of this article, as detailed in Project Budgets, shall be considered as estimates based on the best information available at the time of preparation of such Project Budgets. Such sums shall be subject to adjustment whenever necessary to reflect the actual cost of any such items purchased thereafter.

7. The Government shall as appropriate display suitable signs at each project identifying it as one assisted by the UNDP and the Executing Agency.

Article VI. Assessed programme costs and other items payable in local currency

1. In addition to the contribution referred to in article V above, the Government shall assist the UNDP in providing it with assistance by paying or arranging to pay for the following local costs or facilities, in such amounts as may be specified in the relevant Project Document or otherwise determined by the UNDP in pursuance of relevant decisions of its governing bodies, provided that due regard shall be paid to the Government's physical, human and financial resources:

(*a*) The local living costs of advisory experts and consultants assigned to projects in the country;

(*b*) Local administrative and clerical services, including necessary local secretarial help, interpreter-translators, and related assistance;

(*c*) Transportation of personnel within the country; and

(*d*) Postage and telecommunications for official purposes.

2. The Government shall also pay each operational expert, if any, directly the salary, allowances and other related emoluments which would be payable to one of its nationals if appointed to the post involved. It shall grant an operational expert the same annual and sick leave as the Executing Agency concerned grants its own officials, and shall make any arrangement necessary to permit him to take home leave to which he is entitled under the terms of his service with the Executing Agency concerned. Should his service with the Government be terminated by it under circumstances which give rise to an obligation on the part of an Executing Agency to pay him an indemnity under its contract with him, the Government shall contribute to the cost thereof the amount of separation indemnity which would be payable to a national civil servant or comparable employee of like rank whose service is terminated in the same circumstances.

3. The Government undertakes to furnish in kind the following local services and facilities:

(*a*) The necessary office space and other premises;

(*b*) Such medical facilities and services for international personnel as may be available to national civil servants;

(*c*) Simple but adequately furnished accommodation to volunteers; and

(*d*) Assistance in finding suitable housing accommodation for international personnel, and the provision of such housing to operational experts under the same conditions as to national civil servants of comparable rank.

4. The Government shall also contribute towards the expenses of maintaining the UNDP mission in the Republic of Nauru by paying annually to the UNDP a lump sum mutually agreed between the Parties to cover the following expenditures:

(*a*) An appropriate office with equipment and supplies, adequate to serve as local headquarters for the UNDP in the country;

(*b*) Appropriate local secretarial and clerical help, interpreters, translators and related assistance;

(*c*) Transportation of the resident representative and his staff for official purposes within the country;

(*d*) Postage and telecommunications for official purposes; and

(*e*) Subsistence for the resident representative and his staff while in official travel status within the country.

5. The Government shall have the option of providing in kind the facilities referred to in paragraph 4, above, with the exception of items (*b*) and (*e*).

6. Monies payable under the provisions of this article, other than under paragraph 2, shall be paid by the Government and administered by the UNDP in accordance with article V, paragraph 5.

Article VII. Relation to assistance from other sources

In the event that assistance towards the execution of a project is obtained by either Party from other sources, the Parties shall consult each other and the Executing Agency with a view to effective co-ordination and utilization of assistance received by the Government from all sources. The obligations of the Government hereunder shall not be modified by any arrangements it may enter into with other entities cooperating with it in the execution of a project.

Article VIII. Use of assistance

The Government shall exert its best efforts to make the most effective use of the assistance provided by the UNDP and shall use such assistance for the purpose for which it is intended. Without restricting the generality of the foregoing, the Government shall take such steps to this end as are specified in the Project Document.

Article IX. Privileges and immunities

1. The Government shall apply to the United Nations and its organs, including the UNDP and United Nations subsidiary organs acting as UNDP Executing Agencies, their property, funds and assets, and to their officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations.

2. The Government shall apply to each specialized agency acting as an Executing Agency, its property, funds and assets, and to its officials, the provisions of the Conven-

tion on the Privileges and Immunities of the Specialized Agencies, including any annex to the Convention applicable to such specialized agency. In case the International Atomic Energy Agency (the IAEA) acts as an Executing Agency, the Government shall apply to its property, funds and assets, and to its officials and experts, the Agreement on the Privileges and Immunities of the IAEA.

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

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

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

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

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

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

Article X. Facilities for execution of UNDP assistance

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

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

(*b*) prompt issuance without cost of necessary visas, licenses or permits;

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

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

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

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

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

(*h*) prompt release from customs of the items mentioned in sub-paragraphs (*f*) and (*g*), above.

2. Assistance under this Agreement being provided for the benefit of the Government and people of the Republic of Nauru, the Government shall, subject to the provisions of this paragraph, bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims which may be brought by third parties against the UNDP or an Executing Agency, their officials or other persons performing services on their behalf, and shall hold them harmless in respect of claims or liabilities arising from operations under this Agreement, except where such claims or liabilities arise from gross negligence or wilful misconduct on the part of the UNDP, an Executing Agency, their officials or other persons performing services on their behalf.

Article XI. Suspension of termination of assistance

1. The UNDP, after consultation with the Government and the Executing Agency, may by written notice to the Government and to the Executing Agency concerned suspend its assistance to any project if in the judgement of the UNDP any circumstance arises which interferes with or threatens to interfere with the successful completion of the project or the accomplishment of its purposes. The UNDP may, in the same or a subsequent written notice, indicate the conditions under which it is prepared to resume its assistance to the project. Any such suspension shall continue until such time as such conditions are accepted by the Government and as the UNDP shall give written notice to the Government and the Executing Agency that it is prepared to resume its assistance.

2. If any situation referred to in paragraph 1 of this article shall continue for a period of fourteen days after notice thereof and of suspension shall have been given by the UNDP to the Government and the Executing Agency, then at any time thereafter during the continuance thereof, the UNDP may by written notice to the Government and the Executing Agency terminate its assistance to the project.

3. The provisions of this article shall be without prejudice to any other rights or remedies the UNDP or the Government may have in the circumstances, whether under general principles of law or otherwise.

Article XII. Settlement of disputes

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

2. Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be referred to the Executing Agency providing the operational expert by either the Government or the operational expert involved, and the Executing Agency concerned shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either Party be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this article, except that the arbitrator not appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

Article XIII. General provisions

1. This Agreement shall enter into force upon signature, and shall continue in force until terminated under paragraph 3, below. Upon the entry into force of this Agreement, it shall supersede existing Agreements concerning the provision of assistance to the Government out of UNDP resources and concerning the UNDP office in the country, and it shall apply as of entry into force to all assistance provided to the Government and to the UNDP office established in the country under the provisions of the Agreements now superseded.

2. This Agreement may be modified by written Agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty days after receipt of such notice.

4. The obligations assumed by the Parties under articles IV (concerning project information) and VIII (concerning the use of assistance) hereof shall survive the expiration or termination of this Agreement. The obligations assumed by the Government under articles IX (concerning privileges and immunities), X (concerning facilities for project execution) and XII (concerning settlement of disputes) hereof shall survive the expiration or termination of this Agreement to the extent necessary to permit orderly withdrawal of

personnel, funds and property of the UNDP and of any Executing Agency, or of any persons performing services on their behalf under this Agreement.

In witness whereof the undersigned, duly appointed representatives of the United Nations Development Programme and of the Government, respectively, have on behalf of the Parties signed the present Agreement in the English language in two copies at Suva, Fiji this third day of February 2012.

For the United Nations Development Programme	For the Government of the Republic of Nauru
[*Signed*] Mr. Knut Ostby	[*Signed*] H.E. Sprent Dabwido
UNDP Fiji Multi-Country Office for Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Palau, Solomon Islands, Tonga, Tuvalu and Vanuatu UNDP Resident Representative	President of the Republic of Nauru

(*b*) Agreement between the Republic of Singapore and the United Nations Development Programme concerning the establishment of the Global Centre for Public Service Excellence. New York, 25 September 2012*

The Government of the Republic of Singapore (hereinafter referred to as the "Government"), as represented by the Ministry of Foreign Affairs, and the United Nations Development Programme (hereinafter referred to as "UNDP"), each hereinafter referred to as a "Party" and collectively as the "Parties";

Desiring to establish favourable conditions for the establishment and operation of UNDP's Global Centre for Public Service Excellence (hereinafter referred to as the "GCPSE" or "Office") in the Republic of Singapore;

Wishing, in that connection, to affirm the legal status of the Office in the Republic of Singapore, as well as the undertakings of UNDP and the Government relating to the Office;

Now, therefore the Parties have entered into this Agreement in a spirit of friendly cooperation:

Article I. Definitions

For the purposes of this Agreement,

(*a*) "Host Country" means the Republic of Singapore;

(*b*) "Head of the Office" means the official who is the Head of the Office;

(*c*) "Officials of the Office" means all United Nations staff members, within the meaning of Article 97 of the Charter of the United Nations, whose employment and contractual relationship are defined by a letter of appointment subject to regulations prom-

* Entered into force on 25 September 2012 by signature, in accordance with the provisions of article XXVI.

ulgated by the General Assembly pursuant to Article 101, paragraph 1, of the Charter assigned to service the Office, with the exception of those who are locally recruited and paid hourly rates, as provided for in United Nations General Assembly resolution 76(1) of 7 December 1946;

(*d*) "Service Contractors" means individuals hired by UNDP to provide secretarial, finance, IT, human resource and other administrative support services to the Office;

(*e*) "the General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946, to which the Host Country is a Party;

(*f*) "Competent Authorities" means central, local and other authorities under the laws of the Host Country;

(*g*) "Premises of the Office" means a building or part of building occupied by the Office for the purposes of the Office, and includes any land, buildings or platforms that may from time to time be included, in accordance with this Agreement or supplementary agreements entered into with the Government. Any other premises in the Host Country which may be used with the concurrence of the Government for meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office shall be temporarily regarded as the Premises of the Office for the duration of such meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office;

(*h*) "Archives of the Office" means all records, correspondence, documents, manuscripts, computer records, still and motion pictures, film and sound recordings, belonging to or held by the Office in furtherance of its functions;

(*i*) "Property of the Office" means all property, including funds, income and other assets belonging to the Office or held or administered by the Office in furtherance of the functions of the Office.

Article II. Establishment of the Office

The seat of the Office shall be established in the Host Country, with its primary functions being:

(*a*) A leading research hub, that draws upon the best quality material emanating from the various think-tanks, universities, and from on-going policy practice in the Host Country and other countries, supplementing UNDP's existing knowledge and research capability; and

(*b*) A convening hub that maximizes the unique position of the Host Country to bring together and connect diverse experiences for promoting South-South collaboration, sharing, exchange and co-creation. UNDP's global outreach and networks are expected to help the Office to become a global hub for all knowledge sharing and policy thinking on public service capacity for sustainable development.

Article III. Juridical personality

1. The Office shall possess juridical personality in the Host Country. It shall have the capacity:

(*a*) to contract;

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

(*c*) to institute legal proceedings.

2. For the purposes of this Agreement, the Office shall be represented by the Head of the Office.

Article IV. Purpose and scope of the Agreement

1. This Agreement regulates the status of the Premises of the Office, officials of the Office, and Service Contractors in the Host Country.

2. This Agreement sets out the arrangements necessary for the effective discharge of the functions by the Office. It does not set out the relations and modalities of assistance rendered by UNDP to the Host Country as part of its mandate.

Article V. Application of the General Convention

The General Convention shall be applicable to the Office, Property of the Office, and to officials of the Office in the Host Country.

Article VI. Inviolability of the Office

1. (*a*) The Premises of the Office shall be inviolable.

(*b*) No officer or official of the Host Country or person exercising any public authority within the Host Country, shall enter the Premises of the Office to perform any duties therein except with the consent of, and under the conditions approved by the Head of the Office. In case of a fire or other emergency requiring prompt protection action, the consent of the Head of the Office to any necessary entry into the Premises of the Office shall be presumed if he or she cannot be reached in time.

(*c*) The Premises and facilities of the Office can be used for meetings, seminars, training courses, symposiums, workshops and other similar activities organized by the Office, the United Nations or principal and subsidiary organs as well as specialized agencies of the United Nations.

(*d*) The Premises of the Office shall not be used or be permitted to be used as a refuge for avoiding arrest or in any manner incompatible with the functions of the Office, as set forth in article II, as well as the purpose and scope of this Agreement as set forth in article IV.

2. The Archives of the Office, and in general all documents and materials made available, belonging to or used by it, wherever located in the Host Country and by whomsoever held, shall be inviolable.

Article VII. Security and protection

The Competent Authorities shall have the responsibility to provide appropriate security and protection of the Premises of the Office and Officials of the Office within the said premises that is equal and the same as that customarily afforded to international organizations in Singapore. Such security and protection includes alerting the Office where

there is a security threat on its premises and, where appropriate, enhancing patrols in the vicinity.

Article VIII. Public services

1. The Competent Authorities shall facilitate, upon request of the Head of the Office and under terms and conditions not less favourable than those accorded by the Government to any accredited foreign mission, access to the public services needed by the Office such as, but not limited to, utility, power and communications services.

2. In cases where public services referred to in paragraph 1 above, are made available to the Office by the Competent Authorities or where the prices thereof are under their control, the rate for such services shall not exceed the lowest comparable rates accorded to accredited foreign missions.

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

4. The provisions of this article shall not prevent the reasonable application of fire protection or sanitary regulations of the Host Country.

Article IX. Communications facilities

1. The Office shall enjoy, for its official communications, treatment not less favourable than that accorded by the Host Country to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communication and press rates for information to the press and radio.

2. The Government shall secure the inviolability of the official communications of the Office, whatever the means of the communications employed, and shall not apply any censorship to such communications.

3. The Office shall have the right to operate communication equipment, including satellite facilities and to use codes and to dispatch and receive correspondence by couriers and bags. The bags must bear visibly the United Nations emblem and may contain only documents or articles intended for official use, and the courier shall be provided with a courier certificate issued by the United Nations.

Article X. Property of the Office

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

2. The Property of the Office shall be exempt from restrictions, regulations, controls and moratoria of any nature.

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

(*a*) may hold and use funds, currency 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 or currency from the Host Country to another country or within the Host Country, to the United Nations or any other agency;

(*c*) may purchase, in exchange for any convertible currency, the national currency of the Host Country in such amounts as it may require for meeting its expenditures in the Host Country, at the official exchange rate no less favourable than that accorded to other international organizations or diplomatic missions in the Host Country.

Article XI. Exemption from taxes, duties, import or export restrictions

1. The Office and Property of the Office shall enjoy:

(*a*) Exemption from all direct taxes. For avoidance of doubt, direct taxation shall include property tax in relation to the Premises of the Office;

(*b*) Exemption from:

(i) Goods and services tax ("GST") on all imports (except vehicles) for the official use of the Office;

(ii) Stamp duty in relation to the Premises of the Office.

(*c*) Exemption from customs and excise duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Office for its official use. It is understood, however, that articles imported under such exemption will not be sold in the Host Country except under conditions agreed with the Government.

(*d*) Exemption from customs and excise duties and prohibitions and restrictions on imports and exports in respect of its publications.

2. Following the quarterly submission of claims for reimbursement of GST in respect of the local consumption of goods and services for the official use of the Office and Government tax on utility bills and telephone charges incurred by the Office, the Government shall promptly remit or return to UNDP the amount of tax.

Article XII. Representatives of Members and participants in the United Nations meetings

1. Representatives of Members of the United Nations and principal and subsidiary organs as well as specialized agencies of the United Nations invited to meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office shall, while exercising their functions, enjoy the privileges and immunities as set out in article IV of the General Convention.

2. The Government, in accordance with relevant United Nations principles and practices and the present Agreement, shall respect the freedom of expression of the persons described in paragraph 1 of this article, where such expression is made in their capacity as participants during the activities described in paragraph 1.

Article XIII. Officials of the Office

1. Officials of the Office shall enjoy the following privileges, immunities and facilities in the Host Country:

(*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 in force after termination of employment with the United Nations;

(*b*) Exemption from taxation on the salaries and emoluments paid to them by the United Nations;

(*c*) Exemption from national service obligations in the Host Country;

(*d*) Exemption, for themselves and for their spouses and dependent members of their families, from immigration restrictions or alien registration procedures, and from visa application fees. Where required, all visa applications shall be processed by the Government without delay provided that the relevant documents are in order. For subsequent entries into the Host Country, officials of the Office, their spouses and dependent members shall not be required to obtain entry visas;

(*e*) Exemption for themselves for the purpose of official business from any restriction on movement and travel inside the Host Country and a similar exemption for themselves and for their spouses and dependent members of their families for recreation in accordance with arrangements agreed upon between the Head of Office and the Competent Authorities;

(*f*) In regard to foreign exchange, including holding accounts in foreign currencies, enjoyment of the same facilities as are accorded to members of diplomatic missions accredited to the Host Country;

(*g*) The same protection and repatriation facilities with respect to themselves, their spouses, and dependent members of their families as are accorded in time of international crisis to diplomatic envoys;

(*h*) Officials of the Office shall be exempted from import duties and GST for personal effects (i.e., furniture and household effects, but not extending to tobacco, liquor and vehicles) for the first six months after they take up their post in the Host Country. No new item imported into the Host Country by an official of the Office shall be disposed of by sale in the Host Country less than 12 months after the date of purchase, except with the prior written consent of the Government;

(*i*) Officials of the Office who are at Grade D1 and above and who are not citizens or permanent residents of the Host Country shall, in addition to the exemption stated in sub-paragraph (*h*) above, be exempted from customs and excise duty, certificates of entitlement, road tax, additional registration fees and GST in respect of a vehicle intended for personal use, provided that each concerned Official of the Office may avail himself of the exemption provided for in this sub-paragraph in respect of one vehicle in every four (4) year period;

(*j*) Officials of the Office shall be entitled, on the termination of their functions in the Host Country, to export their furniture and household effects, including motor vehicles, without duties and taxes.

2. For the purpose of this article, a 'spouse' is defined as one from a mixed-gender marriage. Children of the 'officials of the Office' who are above the age of 21 years or who are married shall not enjoy the privileges and facilities provided in this article.

3. In accordance with the provisions of section 17 of the General Convention, the Competent Authorities shall be periodically informed of the names of the officials of the Office.

Article XIV. Head of the Office

Without prejudice to the provisions of the above article, the Head of the Office shall enjoy during his or her residence in the Host Country, the privileges, immunities and facilities granted to heads of accredited foreign missions to the Host Country.

Article XV. Service Contractors

1. The Host Country will consider, where appropriate, according to specific individuals falling within the definition of Service Contractors immunity from legal process in respect of words spoken or written and acts done by them when exercising their functions in accordance with their contract with UNDP.

2. For the purpose of enabling the Host Country to assess whether such immunity may be accorded, the Head of the Office shall submit a list of persons engaged by the Office as Service Contractors. The Head of Office shall also provide, in writing, reasons why the immunity is necessary, and the duration of immunity requested for the individual Service Contractors.

3. Notwithstanding paragraph 1 of this article, Service Contractors who are citizens or permanent residents of the Host Country shall not enjoy any immunity whatsoever.

Article XVI. Waiver of immunity

1. Privileges and immunities referred to in articles XIII through XV above are granted in the interest of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General of the United Nations shall have the right and the duty to waive the immunity of the relevant individual in any case where, in his/her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

2. The UNDP shall cooperate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned above.

Article XVII. Entry into, exit from, movement and sojourn within the Host Country

1. All persons referred to in this Agreement including all participants in meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office shall, where required, have their visa applications processed by the Government without delay provided that the relevant documents are in order.

2. In the case of officials of the Office and their spouses and dependent members of their families, visa application fees, where applicable, shall be waived by the Government. In all other cases, the waiver of visa application fees may be granted at the discretion of the Government, provided that a request for waiver, which contains reasons in support of such waiver, is submitted to the Government prior to the entry into the Host Country of the person(s) concerned.

Article XVIII. United Nations laissez-passer*, certificates and visas*

1. The Government shall recognize and accept the United Nations *laissez-passer* issued to Officials of the Office as a valid travel document.

2. In accordance with the provisions of section 26 of the General Convention, the Competent Authorities shall recognize and accept the United Nations certificate issued to experts and other persons travelling on the business of the United Nations.

3. Applications for visas, entry permits or licenses, where required, from holders of United Nations *laissez-passer*, when accompanied by a certificate or confirmation from the Office that they are travelling on the business of the United Nations, shall be dealt with as promptly as possible.

4. Similar facilities to those specified in paragraph 3 above, shall be accorded to experts on mission and other persons who, though not the holders of United Nations *laissez-passer*, are confirmed by the Office as travelling on official business of the United Nations

Article XIX. Identification cards

1. At the request of the Head of the Office, the Government shall issue identification cards to the officials of the Office certifying their status under this Agreement.

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

Article XX. Flags, emblems and markings

The Office shall be entitled to display the United Nations flag, logo, emblem and markings in the Premises of the Office and on vehicles used for official purposes.

Article XXI. Social security

1. The United Nations Joint Pension Fund shall enjoy legal capacity in the Host Country and shall enjoy the same exemptions, privileges and immunities as the United Nations itself. Benefits received from the Pension Fund shall be exempt from taxation.

2. The United Nations and the Government agree that, owing to the fact that officials of the United Nations are subject to the United Nations Staff Regulations and Rules, including article VI thereof, which establish a comprehensive social security scheme, the United Nations and its officials, irrespective of nationality, shall be exempt from the laws of the host country on mandatory coverage and compulsory contributions to the social security schemes of Host Country during their appointment with the United Nations.

3. The provisions of paragraph 1 above shall apply *mutatis mutandis* to the members of families forming part of the household of persons referred to in paragraph 1 above, unless they are employed or self-employed in the Host Country or receive social security benefits from the Host Country.

Article XXII. Access to the labour market for family members and issuance of visas and residence permits to household employees

1. The Competent Authorities shall consider favourably applications, by spouses of officials of the Office whose duty station is in the Host Country, and their children forming part of their household who are under 21 years of age or economically dependent, to take employment in the Host Country in accordance with prevailing rules and regulations.

2. The Competent Authorities shall issue visas and residence permits and any other documents, where required, provided that the relevant documents are in order, to household employees of officials of the Office as speedily as possible.

Article XXIII. Cooperation with the Competent Authorities

1. Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Host Country, and not to interfere in the internal affairs of the Host Country.

2. Without prejudice to the privileges and immunities referred to in this Agreement, the United Nations shall cooperate at all times with the Competent Authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the facilities, privileges and immunities accorded to persons referred to in the present Agreement.

Article XXIV. Supplemental agreements

1. Arrangements of an administrative and financial nature concerning the Office may be made by supplemental Agreements, as appropriate.

2. The Parties may enter into any other supplemental Agreements as the Parties may deem appropriate.

Article XXV. Settlement of disputes

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

(*a*) Disputes arising out of contracts and disputes of a private law character to which the Office is a party; and in consultation with the Government.

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

2. Any dispute between the Parties arising out of, or relating to this Agreement, which is not settled by negotiation or another agreed mode of settlement, shall, at the request of either Party, be submitted to a Tribunal of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson of the Tribunal. If, within thirty days of the request for arbitra-

tion, a 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 the arbitrator referred to. The Tribunal shall determine its own procedures, provided that any two arbitrators shall constitute a quorum for all purposes, and all decisions shall require the agreement of any two arbitrators. The expenses of the Tribunal shall be borne by the Parties as assessed by the Tribunal. The arbitral award shall contain a statement of the reasons on which it is based and shall be final and binding on the Parties.

Article XXVI. Final provisions

1. This Agreement may be modified by written Agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. In the event that either Party believes that the other Party has provided more favourable treatment to another similar entity than afforded to it in this Agreement, that Party may request that this Agreement be amended to incorporate comparable treatment and the other Party shall give full and sympathetic consideration to such proposal.

2. This Agreement may be terminated by either Party by written notice to the other and shall terminate six months after receipt of such notice. Notwithstanding any such notice of termination, this Agreement shall remain in force until complete fulfilment or termination of all obligations entered into by virtue of this Agreement.

3. The obligations assumed by the Government shall survive the termination of this Agreement, to the extent necessary to permit orderly withdrawal of the Property of the Office and officials assigned to it by virtue of this Agreement.

4. This Agreement shall be subject to the signature of both Parties. It shall enter into force on the date of the last signature thereof.

In witness whereof, the undersigned, duly appointed representatives of the Parties, have signed the present Agreement at New York on this twenty-fifth day of September, 2012, in the English language, both equally authentic, in two originals.

For the Republic of Singapore	For the United Nations Development Programme
[*Signed*] K. Shanmugam	[*Signed*] Helen Clark
Minister for Foreign Affairs	Administrator

B. Treaties concerning the legal status of intergovernmental organizations related to the United Nations

1. Convention on the Privileges and Immunities of the Specialized Agencies. Approved by the General Assembly of the United Nations on 21 November 1947*

During 2012, Angola, Honduras, Portugal and Switzerland acceded to the Convention and undertook to apply the provisions of the Convention to the following specialized agencies:

State	*Date of receipt of instrument of accession*	*Specialized agencies*
Angola	9 May 2012	ILO, FAO (second revised text of annex II), ICAO, UNESCO, IMF, IBRD, UPU, ITU, WMO, IMO (second revised text of annex XII), IFC, IDA, WIPO, IFAD, UNIDO, UNWTO
	26 July 2012	WHO
Honduras	16 August 2012	ILO, FAO (second revised text of annex II), ICAO, UNESCO, IMF, IBRD, WHO, UPU, ITU
Portugal	8 November 2012	ILO, FAO (second revised text of annex II), ICAO, UNESCO, IMF, IBRD, WHO (third revised text of annex VII), UPU, ITU, WMO, IMO (second revised text of annex XII), IFC, IDA, WIPO, IFAD, UNIDO, UNWTO
Switzerland	25 September 2012	ILO, FAO (second revised text of annex II), ICAO, UNESCO, IMF, IBRD, WHO (third revised text of annex VII), UPU, ITU, WMO, IMO (second revised text of annex XII), IFC, IDA, WIPO, IFAD, UNIDO, UNWTO

As at 31 December 2012, there were 122 States parties to the Convention.**

* United Nations, *Treaty Series*, vol. 33, p. 261.

** For the list of the State parties, see *Multilateral Treaties Deposited with the Secretary-General*, available on the website of the Treaty Section of the United Nations Office of Legal Affairs: http://treaties.un.org.

2. United Nations Educational, Scientific and Cultural Organization

For the purpose of holding international conferences on the territory of member States, the United Nations Educational, Scientific and Cultural Organization (UNESCO) concluded various agreements that contained the following provisions concerning the legal status of the Organization:

Privileges and immunities

The Government of [State] shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations as well as annex IV thereto to which it has been a party from [date].

In particular, the Government shall not place any restriction on the entry into, sojourn in, and departure from the territory of [State] of all persons, of whatever nationality, entitled to attend the meeting by virtue of a decision of the appropriate authorities of UNESCO and in accordance with the Organization's relevant rules and regulations.

Damage and accidents

As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of [State] shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents that may occur to persons present therein. The [State] authorities shall be entitled to adopt appropriate measures to ensure the protection of the participants, particularly against fire and other risks, of the above-mentioned premises, facilities and furniture. The Government of [State] may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization.

Agreement between the Government of the Federal Republic of Germany and the United Nations Educational, Scientific and Cultural Organization concerning the Fifth Session of the International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS V). Paris, 10 August 2012*

The Government of the Federal Republic of Germany and the United Nations Educational, Scientific and Cultural Organization,

having in mind the letter from Dr. Hans-Peter Friedrich, Federal Minister of the Interior, of 24 October 2011, in which the bid of the Government of the Federal Republic of Germany to host the fifth session of the International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS V) was communicated to Ms Irina Bokova, Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO),

having in mind that this bid was accepted by UNESCO in the letter from the Director-Genera1 of UNESCO of 30 March 2012 to Federal Minister Dr. Friedrich,

* Entered into force on 10 August 2012 by signature, in accordance with the provisions of article 8.

having in mind the fact that the Government of the Federal Republic of Germany and UNESCO have decided to hold the Conference in Berlin, the Federal Republic of Germany, from 28 to 30 May 2013,

have agreed as follows:

Article 1. Date and venue of the meeting

The Fifth Session of the International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS V) shall take place at the Hotel Intercontinental in Berlin/Federal Republic of Germany from 28 to 30 May 2013.

Article 2. Nature and scope of the meeting

(1) MINEPS V shall be attended by around 500 participants representing governments, the United Nations system and other intergovernmental organizations, NGOs, sports organizations, the media and enterprises.

(2) The Ministers shall adopt a declaration on behalf of their governments on the following three themes which are to be discussed in three Commissions:

1. Access to sport as a fundamental right for all;

2. Promoting investment in sport and physical education programmes;

3. Preserving the integrity of sport.

(3) The declaration shall provide UNESCO Member States and stakeholders in physical education and sport in public administration and civil society at national and local level with key policy options on further developing physical education and sport while preserving its integrity and core values in the coming years.

(4) At the 14th session of its General Conference, UNESCO adopted the regulations for the general classification of the various categories of meetings convened by UNESCO, which were amended at the 18th, 25th and 33rd sessions. According to the said regulations, this session falls under "intergovernmental meetings other than international conferences of states" (category II).

Article 3. Participants in the meeting

(1) In accordance with decision 189EX/18 by the Executive Board of UNESCO, the following participants shall be invited to the meeting:

1. Chief participants:

The representatives of the member States and of the associate members of UNESCO.

2. Other participants and observers:

a) the representatives of United Nations entities and United Nations specialized agencies with which UNESCO has not concluded mutual representation Agreements;

b) the representatives of other intergovernmental organizations;

c) the representatives of international non-governmental organizations which are official partners of UNESCO;

d) the representatives of international non-governmental organizations which do not maintain official relations with UNESCO;

e) the representatives of institutions and foundations;

f) the representatives of other intergovernmental organizations and non-governmental organizations which are engaged in this field.

(2) The total number of participants, including the representatives, observers and members of the UNESCO Secretariat is expected to be approximately 500 persons.

Article 4. Organization of the meeting

(1) Responsibility for the technical and material organization of the meeting shall be shared by the competent host authorities and UNESCO; the basis for this is the bid submitted by the Government of the Federal Republic of Germany (annex 1*) and the enclosed Statement of Requirements (annex 2*). Both annexes are integral parts of this Agreement.

(2) All matters concerning the technical and material organization of the meeting shall be dealt with via the liaison officer appointed by the Government of the Federal Republic of Germany

Article 5. Privileges and immunities

(1) The Government of the Federal Republic of Germany shall apply, in all matters relating to this meeting, the terms of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, as well as annex IV thereto to which the Federal Republic of Germany has been a party since 10 October 1957. However, the representatives of the non-governmental organizations, which are not in relationship with the United Nations in accordance with Articles 57 and 63 of the United Nations Charter, shall not enjoy the privileges and immunities of the above-mentioned Convention.

(2) All persons entitled to participate in the meeting shall have the right of entry into and exit from the Federal Republic of Germany according to national and EU regulations, and in line with the terms of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations.

(3) Visas and entry permits, where required shall be granted as speedily as possible and free of charge.

Article 6. Damage and accidents

As long as the premises reserved for the meetings are at the disposal of UNESCO, the Government of the Federal Republic of Germany shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents which may occur to persons present therein. The Government of the Federal Republic of Germany shall, however, not assume liability for damage caused by gross negligence or wilful misconduct on the part of the participants. The Government of the Federal Republic of Germany shall be entitled to take appropriate measures to ensure the protection of the above-mentioned premises, facilities and furniture as well as persons, particularly against fire and other risks. It may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization.

* The annexes are not published herein.

Article 7. Settlement of disputes

Any dispute between the Government of the Federal Republic of Germany and UNESCO arising from the interpretation or application of this Agreement which is not settled by negotiation or another agreed settlement procedure, shall upon request by one of the Contracting Parties be referred to an arbitral tribunal for a final decision, comprising three arbitrators, of which one shall be appointed by the Government of the Federal Republic of Germany, one by the Director-General of UNESCO and the third, who shall be the chairman, shall be selected by the first two arbitrators; should one of the Contracting Parties fail to appoint its arbitrator within 60 days after the appointment by the other Contracting Party, or should these two arbitrators have failed to agree on a third arbitrator within 60 days of their appointment, the President of the International Court of Justice may upon request by one of the Contracting Parties make the necessary appointments. If such a dispute affects one of the matters regulated in the Convention on the Privileges and Immunities of the Specialized Agencies, however, it shall be handled in accordance with section 30 of the Convention.

Article 8. Final provisions

(1) This Agreement may be modified in writing by mutual agreement between the Government of the Federal Republic of Germany and UNESCO.

(2) This Agreement shall enter into force immediately after its signature by the Contracting Parties and shall remain in force for the duration of the Conference and as long as is necessary afterwards to settle all issues in connection with any of its provisions.

Done at Paris on 10 August 2012 in duplicate in the German and English languages, both texts being equally authentic.

For the Government of the Federal Republic of Germany	For the United Nations Educational, Scientific and Cultural Organization
[*Signed*]	[*Signed*]

3. International Fund for Agricultural Development

Agreement between the Government of the Lao People's Democratic Republic and the International Fund for Agricultural Development (IFAD) on the establishment of the IFAD's country office*

The Government of the Lao People's Democratic Republic (hereinafter referred to as the Government) and the International Fund for Agricultural Development (hereinafter referred to as IFAD)

Whereas the IFAD, a specialised agency of the United Nations Organisation, wishes to establish a Country Office in the Lao People's Democratic Republic to support its operation, including supervision of projects; consolidate its cooperation and linkages; be close to its partners and programmes; and manage knowledge; and the Government of the Lao People's Democratic Republic agrees to permit the establishment of such an office.

Whereas the Government acceded on 9 August 1960 to the Convention on the Privileges and Immunities of the Specialised Agencies.

Whereas the Government ratified on 13 December 1978 the Agreement Establishing IFAD.

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

(*a*) "the Government" means the Government of the Lao People's Democratic Republic;

(*b*) "IFAD" means the International Fund for Agricultural Development;

(*c*) "Office" means the International Fund for Agricultural Development's Country Office located in the Lao People's Democratic Republic;

(*d*) "IFAD officials" means the Country Representative and all other officials including local staffs as specified by IFAD in accordance with article VI, section 18 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947;

(*e*) "Local staff" means Lao nationals who are working at IFAD Office.

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* Concluded on 23 July 2012. In 2012, IFAD concluded five other textually similar agreements, namely the Agreement between the Government of the Republic of Burundi and the International Fund for Agricultural Development on the establishment of the IFAD's country office (concluded on 28 March 2012); Agreement between the Government of the Republic of Mali and the International Fund for Agricultural Development on the establishment of the IFAD's country office (concluded on 24 January 2012); Headquarters Agreement between the Federal Republic of Nigeria and the International Fund for Agricultural Development on the establishment of the IFAD's country office (concluded on 23 January 2012); Headquarters Agreement between the Republic of Peru and the International Fund for Agricultural Development on the establishment of the IFAD's country office (concluded on 16 January 2012); and Agreement between the Republic of Sierra Leone and the International Fund for Agricultural Development on the establishment of the IFAD's country office (concluded on 20 December 2012). These five agreements are not reproduced in this volume.

Article II. Juridical personality of the Fund

1. The Government recognizes the juridical personality of the Fund, and in particular its capacity:

(i) to contract;

(ii) to acquire and dispose of movable and immovable property; and

(iii) to be a party to judicial proceedings.

2. The Government shall permit the Fund to purchase or rent premises to serve as its Office.

3. The Office shall be authorised to display the emblem of the Fund on its premises and vehicles.

Article III. Inviolability of the Office

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

2. The archives of the Office, and in general all documents belonging to it or held by it, shall be inviolable, wherever located.

3. The Office and its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the Fund has expressly waived its immunity. No waiver of immunity shall extend to any measure of execution.

4. The Office should not allow its premises to serve as a refuge for any person wanted for a criminal offence or in respect of whom a warrant, conviction or expulsion order has been issued by the competent authorities of the Lao People's Democratic Republic.

5. The authorities, officials and agents of the Lao People's Democratic Republic shall not enter the Office in an official capacity unless at the request or with the authorisation of the Office, granted by the Country Representative or his or her delegate. In the event of *force majeure*, fire or any other calamity requiring urgent measures of protection, the consent of the Country Representative or his or her representative shall be considered to have been given. However, if requested by the Country Representative, any person who has entered the Office with his or her presumed consent shall leave the Office immediately.

6. The competent authorities of the Lao People's Democratic Republic shall, to the extent possible, take all necessary measures to protect the Office against any intrusion or damage, to ensure that their tranquillity is not disturbed and to preserve their dignity.

7. The residences of IFAD's officials of the Lao People's Democratic Republic shall be entitled to the same inviolability and protection as the Office.

Article IV. Public services

1. The Government undertakes to assist the Office as far as possible in obtaining and making available where applicable the necessary public services on equitable terms. The Office shall bear the costs of these services.

2. In the case of interruption or threatened interruption of any such services, the competent authorities shall consider the Office's need for such services as important as that of any other international organisation and shall therefore take the necessary measures to ensure that the Office's activities are not impaired by such a situation.

Article V. Communications

The Office's communications shall enjoy protection under the conditions and limitations defined in section 11 and 12 of the Convention on the Privileges and Immunities of the Specialised Agencies.

Article VI. Tax exemption

The Office, its assets, income and other property shall be exempt from:

(*a*) all direct and indirect taxes on goods directly imported or purchased locally by the organisation for its official use in the Lao People's Democratic Republic, it being understood, however, that no claim of exemption will be made from taxes which are, in fact, no more than charges for public utility services;

(*b*) customs duties or other taxes. However, it is understood that the Office shall not be exempted from prohibitions or restrictions on imports and exports in respect of articles imported or exported by the Office for its official use. Articles imported under such exemption will not be sold in the Lao People's Democratic Republic except under conditions agreed with the Government;

(*c*) customs duties or other taxes on imports and exports in respect of its publications.

Article VII. Financial facilities

1. In connection with its official activities the Office may freely acquire currencies and funds, hold them, use them, and have accounts in the Lao People's Democratic Republic in Kip or any other currency and convert any currency held by it into any other currency.

2. The Office shall enjoy the same exchange facilities as other international organisations represented in the Lao People's Democratic Republic.

Article VIII. Social security

Since IFAD's officials are covered by the Fund's social security scheme or a similar scheme, the Office shall not be required to contribute to any social security scheme in the Lao People's Democratic Republic, and the Government shall not require any member of the Office covered by the Fund's scheme to join such a scheme. However, it is understood that IFAD shall be responsible to contribute for social security scheme for its employees who are not covered by the Fund's scheme.

Article IX. Entry, travel and sojourn

1. The Government shall recognize and accept the United Nations *laissez-passer* issued to officials of IFAD as valid travel documents.

2. Applications for visas, where required, from officials of IFAD holding United Nations *laissez-passer*, when accompanied by a certificate that they are travelling on the business of IFAD, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

3. Similar facilities to those specified in paragraph 2 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are travelling in the business of IFAD.

4. The Government shall facilitate the entry into or departure from the Lao People's Democratic Republic, when travelling to or from the Office, of persons exercising official functions at the Office or invited by it.

5. The Government undertakes to authorise the following persons and their dependants to enter into the Lao People's Democratic Republic and sojourn in the country throughout the duration of their assignment or missions to the Office:

(*a*) the Country Representative and other IFAD's officials;

(*b*) all other persons invited by the Office.

Article X. Identity cards

1. The Country Representative shall communicate to the Government a list of the IFAD's officials (including spouses and other dependants) and inform it of any changes in this list.

2. Upon notification of their appointment, the Government shall issue to all persons referred to in paragraph 1 a card bearing the photograph of its holder which attests that such person is a member of the Office. This card shall be recognised by the competent authorities as an attestation of the person's identity and status as a member of the Office.

Article XI. Privileges and immunities of IFAD's officials

1. Without prejudice to the provisions applicable to the Organisation under the Convention on the Privileges and Immunities of the Specialised Agencies, IFAD's officials shall enjoy the following privileges and immunities in the Lao People's Democratic Republic:

(*a*) immunity from legal process, even after the termination of their functions, in respect of all acts, including words spoken or written, performed by them in their official capacity;

(*b*) exemption from income taxation on salaries and emolument for IFAD Officials, except for local staffs both recruited locally and assigned to hourly rates;

(*c*) exemption, together with their spouses and other dependents, for immigration restrictions and alien registration;

(*d*) exemption, together with their spouses and dependents, from national service obligations and any other compulsory service;

(*e*) exemption from import duty and other levies on their household and personal effects imported within six (6) months after first taking up their functions in the Lao People's Democratic Republic;

(*f*) every three (3) years, admission of one vehicle per family, imported or purchased, provided that such vehicle is not sold or transferred during this period except in accordance with applicable rules and procedures;

(*g*) in the event of international crisis, the same repatriation and evacuation facilities as members of the diplomatic corps accredited to the Government, for themselves, their spouses and other dependents;

(*h*) the same exchange facilities as those accorded to officials of comparable rank of diplomatic missions accredited to the Government.

2. Throughout the duration of his or her functions, the Country Representative shall enjoy the privileges and immunities accorded to the heads of diplomatic missions. The other senior members of the Office designated from time to time by the Country Representative on the basis of the positions of responsibility which they fill shall be accorded the privileges granted to diplomatic agents.

Article XII. General provisions

1. The Government shall make every effort to ensure that the Office and the IFAD's officials enjoy treatment not less favourable than that granted to other intergovernmental, international and regional organisations represented in the Lao People's Democratic Republic.

2. The privileges and immunities provided for in this Agreement are not designed to secure personal advantage for their beneficiaries; they are designed exclusively to ensure that the Office may operate freely in all circumstances, and to safeguard the complete independence of the persons to whom they are granted.

3. Without prejudice to the privileges and immunities granted under this Agreement, the Office and all persons who enjoy these privileges and immunities have the duty to respect the laws and regulations of the Lao People's Democratic Republic. They also have the duty not to interfere in the internal affairs of the Lao People's Democratic Republic.

4. The President of IFAD has the right to waive this immunity when he considers that it would impede the course of justice and can be waived without prejudice to the interests of the Office.

5. The President of IFAD shall take all measures necessary to prevent any abuse of the privileges and immunities granted under this Agreement; to this end, the Fund shall issue such regulations, applicable to the IFAD's officials and others concerned, as may be deemed necessary and appropriate.

6. Should the Government consider that there has been an abuse of a privilege or immunity granted under this Agreement, consultations shall take place, at its request, between the Country Representative and the competent authorities with view to determining whether such an abuse took place. Should such consultations not produce a result which is satisfactory to the Government and the Country Representative, the matter shall be settled in accordance with the procedure described in article XIII.

7. Nothing in this Agreement shall be construed as limiting the right of the Government to take such measures as are necessary to safeguard the security of the Lao People's Democratic Republic.

8. Should the Government find it necessary to apply paragraph 7 of this article, it shall enter into contract with the Country Representative as soon as circumstances permit with a view to determining with mutual agreement the measures required to protect the interests of the Fund.

9. The provisions of this Agreement are applicable to all persons covered by the Agreement, regardless of whether the Government maintains diplomatic relations with the State of which such persons are nationals, or whether such State grants similar privileges and immunities to the diplomatic officials and nationals of the Lao People's Democratic Republic.

10. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Fund or against its officials or consultants or other persons performing services on behalf of the Fund and shall hold the Fund and the abovementioned persons harmless in case of any claims or liabilities, except where it is agreed by the Government and the Fund that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

11. Whenever this Agreement imposes obligations on the competent authorities, the Government shall be ultimately responsible for ensuring the fulfilment of such obligations.

Article XIII. Interpretation and settlement of disputes

1. This Agreement shall be interpreted in the lights of its principal objective, which is to enable the Office to carry out its activities fully and efficiently.

2. Where an allegation is substantiated, the party in breach shall undertake in writing to remedy the breach and notify the other party in writing the measures taken or proposed to be taken to remedy the breach and prevent further breaches.

3. Any dispute between the Government and the Office concerning the interpretation or application of this Agreement, or of any supplementary arrangement, which is not settled by negotiation shall, unless the parties agree otherwise, be referred for final decision to a tribunal of three (3) arbitrators, one to be named by the Government, one to be named by the President of the Fund, and the third, who shall chair the tribunal, to be chosen by mutual agreement by the other two arbitrators.

4. Should the first two arbitrators fail to agree on the choice of the third within six (6) months following their appointment, the third arbitrator shall be named by the President of the International Court of Justice, unless he or she is a national of the Lao People's Democratic Republic, in which case the third arbitrator shall be named by the Vice-President of the International Court of Justice.

5. The decisions of the tribunal of arbitrators shall be fully binding.

Article XIV. Entry into force and revision

1. The provision of this Agreement shall come into force upon signature by both parties.

2. This Agreement will remain in force while the Office remains established in the Lao People's Democratic Republic.

3. The obligations assumed by the Government and the Office under this Agreement shall survive its termination to the extent necessary to permit orderly withdrawal of the property, funds and assets of the Fund and the officials and other persons performing services on behalf of the Fund.

4. This Agreement may only be amended by mutual agreement of the Parties in writing.

In witness whereof the undersigned duly authorised representatives of the Government and the IFAD respectively have, on behalf of both parties, signed the present Agreement in English in two originals.

For the Government of the Lao People's Democratic Republic	For the International Fund for Agricultural Development
[*Signed*] Dr. Thongloun Sisoulith	[*Signed*] Kanayo F. Nwanze
Deputy Prime Minister, Minister of Foreign Affairs	President of the International Fund for Agricultural Development
Vientiane, 23 July 2012	Rome, 23 July 2012

4. United Nations Industrial Development Organization

The United Nations Industrial Development Organization (UNIDO) concluded various agreements which came into force in 2012 that contained provisions relating to the legal status, privileges and immunities of UNIDO.

(*a*) Memorandum of understanding between the United Nations Industrial Development Organization and Israel's Agency for International Development Cooperation, Ministry of Foreign Affairs (MASHAV), signed on 14 May 2012*

Article 7. Confidentiality, privileges and immunities

1. Nothing in the Memorandum of understanding (MOU) shall be so construed as to require either party to furnish any material, data or information the furnishing of which could, in its judgment, require it to violate its policy regarding the confidentiality of such information.

2. Nothing in or relating to the MOU shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations Industrial Development Organization (UNIDO).

* Entered into force on 14 May 2012.

(*b*) Implementation agreement between the United Nations Industrial Development Organization, the United Nations Environment Programme and the Ministry of Environment and Sustainable Development of Côte d'Ivoire regarding the implementation of a project in Côte d'Ivoire entitled "Reducing mercury risks from artisanal and small scale gold mining (ASGM) in Côte d'Ivoire", signed on 3, 19 and 26 October 2012*

Article 5. Status of personnel

For the purpose of implementation of this agreement, no agents or employees of the Administrative Agent, the Participating Organization and the Applicant shall be considered as an agent or employee of any of the others and, thus, the personnel of one shall not be considered as staff members, personnel or agents of any of the others. Without restricting the generality of the preceding sentence, the Administrative Agent, the Participating Organization and the Applicant shall not be liable for the acts or omissions, of the others or their personnel, or of persons performing services on their behalf.

Article 6. Dispute settlement

The Administrative Agent, the Participating Organization and the Applicant shall use their best efforts to promptly settle through direct negotiations any dispute, controversy or claim arising out of or in connection with this Agreement or any breach thereof. Any such dispute, controversy or claim which is not settled within sixty (60) days from the date either party has notified the other party of the nature of the dispute, controversy or claim and of the measures which should be taken to rectify it, shall be resolved through consultation between the Executive Heads of the Parties or their duly authorized representatives.

(*c*) Trust fund agreement between the United Nations Industrial Development Organization and the Innovation and Industrial Development Fund, Republic of Armenia regarding the implementation of a project in Armenia entitled "Establishment of a Centre for International Industrial Cooperation (CIIC) in Armenia", signed on 23 October and 5 November 2012**

PROJECT DOCUMENT

I. LEGAL CONTEXT

The Government of the Republic of Armenia agrees to apply to the present project, *mutatis mutandis*, the provisions of the Standard Basic Assistance Agreement between the United Nations Development Programme and the Government, signed on 8 March 1995 and entered into force on 8 June 2000.***

* Entered into force on 26 October 2012.

** Entered into force on 5 November 2012.

*** United Nations, *Treaty Series*, vol. 1860, p. 183.

5. Organisation for the Prohibition of Chemical Weapons

Agreement between the Organisation for the Prohibition of Chemical Weapons (OPCW) and the Czech Republic on the Privileges and Immunities of the OPCW*

Whereas article VIII, paragraph 48, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that the OPCW shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions;

Whereas article VIII, paragraph 49, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that delegates of States Parties, together with their alternates and advisers, representatives appointed to the Executive Council together with their alternates and advisers, the Director-General and the staff of the Organisation shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the OPCW;

Whereas notwithstanding article VIII, paragraphs 48 and 49 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the privileges and immunities enjoyed by the Director-General and the staff of the Technical Secretariat during the conduct of verification activities shall be those set forth in part II, section B, of the Verification Annex;

Whereas article VIII, paragraph 50, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction specifies that such legal capacity, privileges and immunities are to be defined in agreements between the Organisation and the States Parties,

Now, therefore, the Czech Republic and the Organisation for the Prohibition of Chemical Weapons have agreed as follows:

Article 1. Definitions

In this Agreement:

(*a*) "Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993;

* Entered into force on 1 May 2012. In 2012, the OPCW concluded four textually similar agreements, namely the Agreement between the Organisation for the Prohibition of Chemical Weapons and the Republic of Albania on the privileges and immunities of the OPCW (entered into force on 16 April 2012); the Agreement between the Organisation for the Prohibition of Chemical Weapons and the Eastern Republic of Uruguay on the privileges and immunities of the OPCW (entered into force on 11 May 2012); the Agreement between the Organisation for the Prohibition of Chemical Weapons and the Republic of Estonia on the privileges and immunities of the OPCW (entered into force on 10 July 2012); and the Agreement between the Organisation for the Prohibition of Chemical Weapons and the Republic of Mauritius on the privileges and immunities of the OPCW (entered into force on 1 August 2012). These four agreements are not reproduced in this volume.

(*b*) "OPCW" means the Organisation for the Prohibition of Chemical Weapons established under article VIII, paragraph 1, of the Convention;

(*c*) "Director-General" means the Director-General referred to in article VIII, paragraph 41, of the Convention, or in his absence the acting Director-General;

(*d*) "Officials of the OPCW" means the Director-General and all members of the staff of the Technical Secretariat of the OPCW;

(*e*) "States Parties" means the States Parties to the Convention;

(*f*) "Representatives of States Parties" means the accredited heads of delegation of States Parties and/or to the Executive Council or the Delegates to other meetings of the OPCW;

(*g*) "Experts" means persons who, in their personal capacity, are performing missions authorised by the OPCW, are serving on its organs, or who are, in any way, at its request, consulting with the OPCW;

(*h*) "Meetings convened by the OPCW" means any meeting of any of the organs or subsidiary organs of the OPCW, or any international conferences or other gatherings convened by the OPCW;

(*i*) "Property" means all property, assets and funds belonging to the OPCW or held or administered by the OPCW, or any international conferences or other gatherings convened by the OPCW;

(*j*) "Archives of the OPCW" means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by the OPCW or any official of the OPCW in an official function, and any other material which the Director-General and the Czech Republic may agree shall form part of the archives of the OPCW;

(*k*) "Premises of the OPCW" are the buildings or parts of buildings, and the land ancillary thereto if applicable, used for the purposes of the OPCW, including those referred to in part II, subparagraph 11(b), of the Verification Annex to the Convention.

Article 2. Juridical personality

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

(*a*) to contract;

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

(*c*) to institute and act in legal proceedings.

Article 3. Privileges and immunites of the OPCW

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

2. The premises of the OPCW shall be inviolable. The property of the OPCW, wherever located and by whomever held, shall be immune from search, requisition, confisca-

tion, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. The archives of the OPCW shall be inviolable, wherever located.

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

(*a*) the OPCW may hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) the OPCW may freely transfer its funds, securities, gold and currencies to or from the Czech Republic, to or from any other country, or within the Czech Republic, and may convert any currency held by it into any other currency.

5. The OPCW shall, in exercising its rights under paragraph 4 of this article, pay due regard to any representations made by the Government of the Czech Republic in so far as it is considered that effect can be given to such representations without detriment to the interests of the OPCW.

6. The OPCW and its property shall be:

(*a*) exempt from all direct taxes; it is understood, however, that the OPCW will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) exempt from customs duties, import turnover taxes and prohibitions and restrictions on imports and exports in respects of articles imported or exported by the OPCW for its official use; it is understood, however, that articles imported under such exemption will not be sold in the Czech Republic, except in accordance with conditions agreed upon with the Czech Republic;

(*c*) exempt from duties, import turnover taxes and prohibitions and restrictions on imports and exports in respect of its publications.

7. While the OPCW will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the OPCW is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Czech Republic will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article 4. Facilities and immunities in respect of communications and publications

1. For its official communications the OPCW shall enjoy, in the territory of the Czech Republic and as far as may be compatible with any international conventions, regulations and arrangements to which the Czech Republic adheres, treatment not less favourable than that accorded by the Government of the Czech Republic to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes for post and telecommunications, and press rates for information to the media.

2. No censorship shall be applied to the official correspondence and other official communications of the OPCW. The OPCW shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers

and bags. Nothing in this paragraph shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the Czech Republic and the OPCW.

3. The Czech Republic recognizes the right of the OPCW to publish and broadcast freely within the territory of the Czech Republic for purposes specified in the Convention.

4. All official communications directed to the OPCW and all outward official communications of the OPCW, by whatever means or whatever form transmitted, shall be inviolable. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, videos, films, sound recordings and software.

Article 5. Representatives of States Parties

1. Representatives of States Parties, together with alternates, advisers, technical experts and secretaries of their delegations, at meetings convened by the OPCW, shall, without prejudice to any other privileges and immunities which they may enjoy, while exercising their functions and during their journeys to and from the place of the meeting, enjoy the following privileges and immunities:

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

(*b*) immunity from legal process of any kind in respect of words spoken or written and all acts done by them, in their official capacity; such immunity shall continue to be accorded, notwithstanding that the persons concerned may no longer be engaged in the performance of such functions;

(*c*) inviolability for all papers, documents and official material;

(*d*) the right to use codes and to dispatch or receive papers, correspondence or official material by courier or in sealed bags;

(*e*) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations while they are visiting or passing through the Czech Republic in the exercise of their functions;

(*f*) the same facilities with respect to currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(*g*) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in paragraph 1 of this article may be present in the territory of the Czech Republic for the discharge of their duties shall not be considered as periods of residence.

3. The privileges and immunities are accorded to the persons designated in paragraph 1 of this article in order to safeguard the independent exercise of their functions in connection with the OPCW and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the Czech Republic.

4. The provisions of paragraphs 1 and 2 of this article are not applicable in relation to a person who is a national of the Czech Republic.

Article 6. Officials of the OPCW

1. During the conduct of verification activities, the Director-General and the staff of the Technical Secretariat, including qualified experts during investigations of alleged use of chemical weapons referred to in part XI, paragraphs 7 and 8 of the Verification Annex to the Convention, enjoy, in accordance with article VIII, paragraph 51, of the Convention, the privileges and immunities set forth in part II, section B, of the Verification Annex to the Convention or, when transiting the territory of non-inspected States Parties, the privileges and immunities referred to in part II, paragraph 12, of the same Annex.

2. For other activities related to the object and purpose of the Convention, officials of the OPCW shall:

(*a*) be immune from, personal arrest or detention and from seizure of their personal baggage;

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

(*c*) enjoy inviolability for all papers, documents and official material, subject to the provisions of the Convention;

(*d*) enjoy exemption from taxation in respect of salaries and emoluments paid to them by the OPCW;

(*e*) be exempt, together with their spouses, from immigration restrictions and alien registration;

(*f*) be given, together with their spouses, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;

(*g*) be accorded the same privileges in respect of exchange facilities as are accorded to members of comparable rank of diplomatic missions.

3. The officials of the OPCW shall be exempt from national service obligations, provided that, in relation to nationals of the Czech Republic, such exemption shall be confined to officials of the OPCW whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the OPCW and approved by the Czech Republic. Should other officials of the OPCW be called up for national service by the Czech Republic, the Czech Republic shall, at the request of the OPCW, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

4. In addition to the privileges and immunities specified in paragraphs 1, 2 and 3 of this article, the Director-General of the OPCW shall be accorded on behalf of himself and his spouse, the privileges and immunities, exemptions and facilities accorded to diplomatic agents on behalf of themselves and their spouses, in accordance with international law. The same privileges and immunities, exemptions and facilities shall also be accorded to a senior official of the OPCW acting on behalf of the Director-General during his absence from duty.

5. Privileges and immunities are granted to officials of the OPCW in the interests of the OPCW, and not for the personal benefit of the individual themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the Czech Republic. The OPCW shall have the right and the duty

to waive the immunity of any official of the OPCW in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

6. The OPCW shall cooperate at all times with the appropriate authorities of the Czech Republic to facilitate the proper administration of justice and secure the observance of local laws and regulations to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this article.

7. In the event that the OPCW operates a system for the payment of pensions or annuities to former officials, the provision of paragraph 2, subparagraph (d) of this article shall not apply to such pensions or annuities.

Article 7. Experts

1. Experts 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 such functions.

(*a*) immunity from personal arrest or detention and from 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 performing official functions of the OPCW;

(*c*) inviolability for all papers, documents and official material;

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

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

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. The privileges and immunities are accorded to experts in the interests of the OPCW and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the Czech Republic. The OPCW 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 can be waived without prejudice to the interests of the OPCW.

Article 8. Abuse of privilege

1. If the Czech Republic considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the Czech Republic and the OPCW to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Czech Republic and the OPCW, the question whether an abuse of privilege or immunity has occurred, shall be settled by a procedure in accordance with article 10.

2. Persons included in one of the categories under articles 6 and 7 shall not be required by the territorial authorities to leave the territory of the Czech Republic on account of any activities by them in their official capacity. In the case, however, of abuse of privileges and immunities committed by any such person in activities outside official functions, the person may be required to leave by the Government of the Czech Republic, provided that the order to leave the country has been issued by the territorial authorities with the approval of the Foreign Minister of the Czech Republic. Such approval shall be given only after consultation with the Director-General of the OPCW. If expulsion proceedings are taken against the person, the Director-General of the OPCW shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

Article 9. Travel documents and visas

1. The Czech Republic shall recognise and accept as valid the United Nations *laissez-passer* issued to the officials of the OPCW, in accordance with special OPCW arrangements, for the purpose of carrying out their tasks related to the Convention. The Director-General shall notify the Czech Republic of the relevant OPCW arrangements.

2. The Czech Republic shall take all necessary measures to facilitate the entry into and sojourn in its territory and shall place no impediment in the way of the departure from its territory of the persons included in one of the categories under articles 5, 6 and 7 above, whatever their nationality, and shall ensure that no impediment is placed in the way of their transit to or from the place of their official duty or business and shall afford them any necessary protection in transit.

3. Applications for visas and transit visas, where required, from persons included in one of the categories under articles 5, 6 and 7, when accompanied by a certificate that they are travelling in their official capacity, shall be dealt with as speedily as possible to allow those persons to effectively discharge their functions. In addition, such persons shall be granted facilities for speedy travel.

4. The Director-General, the Deputy Director(s)-General and other officials of a rank not lower than head of division of the OPCW, travelling in their official capacity, shall be granted the same facilities for travel as accorded to members of comparable rank in diplomatic missions.

5. For the conduct of verification activities visas are issued in accordance with paragraph 10 of part II, section B, of the Verification Annex to the Convention.

Article 10. Settlement of disputes

1. The OPCW shall make provision for appropriate modes of settlement of:

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

(*b*) disputes involving any official of the OPCW or expert who, by reason of his official position, enjoys immunity, if such immunity has not been waived in accordance with article 6, paragraph 5, or article 7, paragraph 2, of this Agreement.

2. Any dispute concerning the interpretation or application of this Agreement, which is not settled by mutual consultation, shall be referred for final decision to a tribunal of three arbitrators, at the request of either party to the dispute. Each party shall appoint

one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.

3. If one of the parties fails to appoint an arbitrator and has not taken steps to do so within two months following a request from the other party to make such an appointment, the other party may request the President of the International Court of Justice to make such appointment.

4. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either party may request the President of the International Court of Justice to make such appointment.

5. The tribunal shall conduct its proceedings in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States, as in force on the date of entry of this Agreement.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article 11. Interpretation

1. The provisions of this Agreement shall be interpreted in the light of the functions which the Convention entrusts to the OPCW.

2. The provisions of this Agreement shall in no way limit or prejudice the privileges and immunities accorded to members of the inspection team in part II, section B, of the Verification Annex to the Convention or the privileges and immunities accorded to the Director-General and the staff of the Technical Secretariat of the OPCW in article VIII, paragraph 51, of the Convention. The provisions of this Agreement shall not themselves operate so as to abrogate, or derogate from, any provisions of the Convention or any rights or obligations which the OPCW may otherwise have, acquire or assume.

Article 12. Final provisions

1. This Agreement shall enter into force on the first day of the second month following the day on which the Czech Republic and the OPCW have notified each other in writing that their internal legal requirements for the entry of this Agreement into force have been complied with.

2. This Agreement shall continue to be in force for as long as the Czech Republic remains a State Party to the Convention.

3. The Czech Republic and the OPCW may enter into such supplementary agreements as may be necessary.

4. Consultations with respect to amendment of this Agreement shall be entered into at the request of the Czech Republic or the OPCW. Any such amendment shall be by mutual consent expressed in an agreement concluded by the Czech Republic and the OPCW.

Done in The Hague in duplicate on 15 June 2011, in the English Language.

For OPCW	For the Czech Republic
[*Signed*] Ahmed Üzümcü	[*Signed*]

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. Membership of the United Nations

As of 31 December 2012, the number of Member States of the United Nations remained at 193.

On 23 September 2011, acting in accordance with rule 135 of the rules of procedure of the General Assembly and rule 59 of the provisional rules of procedure of the Security Council, the Secretary-General circulated an application of Palestine for admission to membership in the United Nations, contained in a letter received on 23 September 2011 from its President, Mahmoud Abbas.[1] By resolution 67/19 of 29 November 2012, the General Assembly took note of the report of the Security Council Committee on the Admission of New Members of 11 November 2011[2] in which the Chair of the Committee stated, *inter alia*, that the Committee was unable to make a unanimous recommendation to the Security Council concerning the application of Palestine for admission to membership in the United Nations. In the same resolution, the General Assembly decided to accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice. The General Assembly further requested the Secretary-General to take the necessary measures to implement resolution 67/19 and to report to the General Assembly within three months of its adoption on progress made in this regard.

[1] Application of Palestine for admission to membership in the United Nations: Note by the Secretary-General of 23 September 2011 (A/66/371—S/2011/592).

[2] Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations (S/2011/705).

2. Peace and Security

(*a*) Peacekeeping missions and operations[3]

(i) *Peacekeeping missions and operations established in 2012*

Syrian Arab Republic

In accordance with General Assembly resolution 66/253 of 16 February 2012, the former Secretary-General of the United Nations, Mr. Kofi Annan, was appointed Joint Special Envoy of the United Nations and the League of Arab States in relation to the situation in the Syrian Arab Republic.[4] On 21 March 2012, the President of the Security Council welcomed the appointment of Mr. Annan as Joint Special Envoy and expressed the Council's support for an initial six-point proposal outlined by the Joint Special Envoy and submitted to the Syrian authorities.[5] In resolution 2042 (2012) of 14 April 2012, the Council reaffirmed its support for the six-point proposal, annexed to the resolution, and called for the urgent, comprehensive and immediate implementation of all its elements.

On 21 April 2012, the Security Council adopted resolution 2043 (2012) in which it decided to establish for an initial period of 90 days the United Nations Supervision Mission in Syria (UNSMIS),[6] under the command of a Chief Military Observer, comprising an initial deployment of up to 300 unarmed military observers as well as an appropriate civilian component as required to fulfil its mandate. It further decided that the mandate of UNSMIS should be to monitor a cessation of armed violence in all its forms by all parties and to monitor and support the full implementation of the six-point proposal of the Joint Special Envoy

In resolution 2059 (2012) of 20 July 2012, the Council decided to renew the mandate of UNSMIS for a final period of 30 days, taking into consideration the recommendations of the Secretary-General to reconfigure the mission and the operational implications of the increasingly dangerous security situation in Syria.[7] The Council further expressed its willingness to renew the mandate of UNSMIS thereafter only in the event that the Secretary-General reported and the Security Council confirmed the cessation of the use of heavy weapons and a reduction in the level of violence by all sides sufficient to allow UNSMIS to implement its mandate.

In a letter dated 10 August 2012 from the Secretary-General addressed to the President of the Security Council,[8] the Secretary-General informed the Council that the cessation of the use of heavy weapons and a reduction in violence by all sides sufficient to allow UNSMIS to implement its mandate, as set out in resolution 2059 (2012), had not been achieved and, therefore, UNSMIS mandate came to an end at midnight on 19 August 2012. The Secretary-

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[3] The missions and operations are listed in chronological order as per their date of establishment.

[4] SG/SM/14124.

[5] Statement by the President of the Security Council of 21 March 2012 (S/PRST/2012/6).

[6] For more information about UNSMIS, see http://www.un.org/en/peacekeeping/missions/unsmis/ and report of the Secretary-General on the implementation of Security Council resolution 2043 (2012) (S/2012/523).

[7] See report of the Secretary-General on the implementation of Security Council resolution 2043 (2012) (S/2012/523).

[8] S/2012/618.

General further informed the Council that he intended to work in the immediate future towards establishing an effective and flexible United Nations presence in Syria that would support the Organization's efforts with the parties to end hostilities and, where possible and agreed, to support the Syrians in taking the steps they identify towards a negotiated and inclusive political settlement. The Council reiterated its support for the mission of good offices of the Secretary-General and for the work of the Joint Special Representative through a letter dated 17 August 2012 from the President of the Security Council addressed to the Secretary-General.[9]

In light of Mr. Annan's decision to step down as Joint Special Envoy at the end of August 2012, Mr. Lakhdar Brahimi was appointed Joint Special Representative of the United Nations and the League of Arab States for Syria on 17 August 2012.[10]

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2012*

a. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964) of 4 March 1964.[11] The Security Council decided by resolution 2058 (2012) of 19 July 2012 to extend the mandate of UNFICYP for a further period ending 31 January 2013.

b. Syrian Arab Republic and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974) of 31 March 1974.[12] The Security Council renewed the mandate of UNDOF by resolutions 2052 (2012) of 27 June 2012 and 2084 (2012) of 19 December 2012, until 31 December 2012 and 30 June 2013, respectively. The Security Council further expressed grave concern at all violations of the 1974 Disengagement of Forces Agreement,[13] including the presence of the Syrian Arab Armed Forces and unauthorized military equipment inside the Area of Separation, and stressed the obligation of both parties to scrupulously and fully respect the terms of the Agreement.

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[9] S/2012/654.

[10] SG/SM/14471.

[11] For more information about UNFICYP, see http://www.unficyp.org and http://www.un.org/en/peacekeeping/missions/unficyp/. See also the report of the Secretary-General on the United Nations operation in Cyprus covering developments from 21 November 2011 to 20 June 2012 (S/2012/507).

[12] For more information about UNDOF, see http://www.un.org/en/peacekeeping/missions/undof and the reports of the Secretary-General on the United Nations Disengagement Observer Force for the period from 1 January to 30 June 2012 and for the period from 1 July to 31 December 2012 (S/2012/403 and S/2012/897, respectively).

[13] S/11302/Add.1.

c. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 428 (1978) of 19 March 1978.[14] Following a request by the Lebanese Foreign Minister, presented in a letter dated 21 July 2012 addressed to the Secretary-General, the Secretary-General recommended the Security Council to consider the renewal of UNIFIL for a further period of one year.[15] The Security Council renewed the mandate of UNIFIL by resolution 2064 (2012) of 30 August 2012 until 31 August 2013.

d. Western Sahara

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 (1991) of 29 April 1991.[16] By resolution 2044 (2012) of 24 April 2012, the Security Council decided to extend the mandate of MINURSO until 30 April 2013.

e. Liberia[17]

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003) of 19 September 2003.[18] The Security Council decided by resolution 2066 (2012) of 17 September 2012, while acting under Chapter VII of the Charter of the United Nations, to extend the mandate of UNMIL until 30 September 2013.

In the same resolution, also acting under Chapter VII of the Charter of the United Nations, the Security Council decided, *inter alia*, that the primary tasks of UNMIL were to continue to support the Government of Liberia in order to solidify peace and stability in the country and to protect civilians, and that UNMIL should also support the Government's efforts, as appropriate, to achieve a successful transition of complete security responsibility to the Liberia National Police (LNP).

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[14] For more information about UNIFIL, see http://unifil.unmissions.org and http://www.un.org/en/peacekeeping/missions/unifil/. See also the reports of the Secretary-General on the implementation of Security Council resolution 1701 (2006) (S/2012/124, S/2012/502 and S/2012/837).

[15] Letter dated 14 August 2012 from the Secretary-General addressed to the President of the Security Council (S/2012/632).

[16] For more information about MINURSO, see http://minurso.unmissions.org/ and http://www.un.org/en/peacekeeping/missions/minurso/. See also the report of the Secretary-General on the situation concerning Western Sahara (S/2012/197).

[17] See subsection (d)(ii) below on missions of the Security Council and subsection (f)(iii) on sanctions as concerning Liberia.

[18] For more information about UNMIL, see http://unmil.unmissions.org and http://www.un.org/en/peacekeeping/missions/unmil/. See also the special report of the Secretary-General on the United Nations Mission in Liberia (S/2012/230) and the twenty-fourth progress report of the Secretary-General on the United Nations Mission in Liberia (S/2012/641).

f. Côte d'Ivoire[19]

The United Nations Operation in Côte d'Ivoire (UNOCI) was established by Security Council resolution 1528 (2004) of 27 February 2004.[20] By resolution 2062 (2012) of 26 July 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of UNOCI as set out in resolution 2000 (2011) of 27 July 2011, paragraph 7, (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*j*), (*k*) and (*m*) until 31 July 2013.

In the same resolution, also acting under Chapter VII of the Charter, the Security Council decided, *inter alia*, that protection of civilians should remain the priority for UNOCI and that it should put added focus on supporting the Government of Côte d'Ivoire on the disarmament, demobilization and reintegration programme and security sector reform, in accordance with paragraph 7 (*e*) and (*f*) of resolution 2000 (2011). The Council called upon UNOCI, where consistent with its authorities and responsibilities, to continue to support national and international efforts to bring to justice perpetrators of grave abuses of human rights and violations of international humanitarian law in Côte d'Ivoire, irrespective of their status or political affiliation. The Council authorized UNOCI to assist, as appropriate, the Ivorian Government in the holding of upcoming local elections, upon request, within its existing resources, capacities and areas of deployment and without prejudice to the core-priorities of the mandate

g. Haiti[21]

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by Security Council resolution 1542 (2004) of 30 April 2004.[22] By resolution 2070 (2012) of 12 October 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of MINUSTAH as contained in its resolutions 1542 (2004), 1608 (2005), 1702 (2006), 1743 (2007), 1780 (2007), 1840 (2008), 1892 (2009), 1908 (2010), 1927 (2010), 1944 (2010) and 2012 (2011) until 15 October 2013, with the intention of further renewal.

h. Republic of the Sudan (Darfur)[23]

The African Union-United Nations Hybrid Operation in Darfur (UNAMID) was established and authorized by Security Council resolution 1769 (2007) of 31 July 2007.[24] By

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[19] See subsection (d)(ii) below on missions of the Security Council and (f)(v) subsection on sanctions as concerning Côte d'Ivoire.

[20] For more information about UNOCI, see http://www.onuci.org and http://www.un.org/en/peacekeeping/missions/unoci/. See also the progress reports of the Secretary-General on the United Nations Operation in Côte d'Ivoire (S/2012/186, S/2012/506 and S/2012/964).

[21] See also subsection (d)(i) below for information on a mission by the Security Council to Haiti.

[22] For more information about MINUSTAH, see http://minustah.org and http://www.un.org/en/peacekeeping/missions/minustah/index.shtml. See also the reports of the Secretary-General on the United Nations Stabilization Mission in Haiti (S/2012/128 and S/2012/678).

[23] See subsection (e)(ii)(d) below on action of Member States authorized by the Security Council and subsection (f)(vi) on sanctions as concerning Darfur.

[24] For more information about UNAMID, see http://unamid.unmissions.org and http://www.un.org/en/peacekeeping/missions/unamid/. See also the reports of the Secretary-General on UNAMID (S/2012/231, S/2012/548 and S/2012/771).

resolution 2063 (2012) of 31 July 2012, the Security Council decided to extend the mandate of UNAMID as set out in resolution 1769 (2007), until 31 July 2013. In the same resolution, the Council, *inter alia*, emphasized the Chapter VII mandate of UNAMID to deliver its core tasks to protect civilians without prejudice to the primary responsibility of the Government of Sudan and to ensure the freedom of movement and security of humanitarian workers and personnel of UNAMID. In this context, it urged UNAMID to deter any threats against itself and its mandate. The Council further emphasized the importance of UNAMID acting to promote human rights, bringing abuses and violations to the attention of the authorities and requested the Secretary-General to provide reporting on all the human rights issues identified in the resolution in his regular reports to the Security Council, and to report promptly gross violations and abuses to the Security Council.[25]

In a letter dated 19 March 2012 from the Secretary-General addressed to the President of the Security Council, the Secretary-General transmitted a framework for African Union and United Nations facilitation of the Darfur peace process.[26] In its resolution 2063 (2012), the Council welcomed the framework and the priority given to the efforts of UNAMID, in coordination with the United Nations country team, to support it.

i. Democratic Republic of the Congo[27]

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by Security Council resolution 1279 (1999) of 30 November 1999.[28] As of 1 July 2010, MONUC was renamed United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). By resolution 2053 (2012) of 27 June 2012, the Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of MONUSCO as set out in resolution 1925 (2010), paragraphs 2, 11 and 12 (a) to (p) and (r) to (t) until 30 June 2013.

In the same resolution, the Security Council decided, *inter alia*, that MONUSCO should support the organization and conduct of provincial and local elections, through the provision of technical and logistical support, in accordance with the paragraph 7 of resolution 1991 (2011). The Council stressed that while protection of civilians remained the priority of MONUSCO, security sector reform should be the primary focus within the stabilization and peace consolidation mandate of the mission. The Council further stressed the importance of the Congolese Government actively seeking to hold accountable those responsible for war crimes and crimes against humanity in the country and of regional cooperation to this end, including through cooperation with the International Criminal Court and called upon MONUSCO to support the Congolese authorities in this regard, and took note of the recent positive steps taken by the Congolese authorities to apprehend Bosco Ntaganda. In addition, the Council decided that MONUSCO should pursue its monitoring, reporting and following-up on human rights violations, including by

[25] See also, with regard to children and armed conflict in the Sudan, subsection (h) below.

[26] S/2012/166.

[27] See subsections (f)(ii) below on sanctions concerning the Democratic Republic of the Congo.

[28] For more information about MONUSCO, see http://monusco.unmissions.org and http://www.un.org/en/peacekeeping/missions/monusco/index.shtml. See also the reports of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2012/65, S/2012/355 and S/2012/838).

using the good offices of the Special Representative of the Secretary-General for the Democratic Republic of the Congo as required. The Council further encouraged MONUSCO to enhance its interaction with the civilian population to raise awareness and understanding about its mandate and activities and to collect reliable information on violations and abuses of international humanitarian and human rights law perpetrated against civilians.

j. Republic of the Sudan (Abyei)[29]

The United Nations Interim Security Force for Abyei (UNISFA) was established by the Security Council in resolution 1990 (2011) of 27 June 2011.[30] By resolutions 2047 (2012) of 17 May 2012 and 2075 (2012) of 16 November 2012, the Security Council decided to extend the mandate of UNISFA for a period of 6 months and until 31 May 2013, respectively, as set out in paragraph 2 of resolution 1990 (2011) and modified by resolution 2024 (2011), and acting under Chapter VII of the Charter of the United Nations, the tasks set out in paragraph 3 of resolution 1990 (2011). The Council determined that for the purposes of paragraph 1 of resolution 2024 (2011), the Safe Demilitarized Border Zone should be defined as provided by the 27 September 2012 Agreement on Security Arrangements between the Republic of the Sudan and the Republic of South Sudan.[31] It reiterated its decisions in resolution 2046 (2012) of 2 May 2012 that Sudan and South Sudan should unconditionally withdraw all of their armed forces to their side of the border in accordance with previously adopted agreements, and activate the necessary border security mechanisms. The Council further expressed its intention to review as appropriate the mandate of UNISFA for possible reconfiguration of the mission in light of the compliance by Sudan and South Sudan with the decisions set forth in resolution 2046 (2012), and their commitments as set forth in the agreements of 20 June, 29 June, 30 July 2011, and 27 September 2012.

k. Republic of South Sudan

The United Nations Mission in the Republic of South Sudan (UNMISS) was established by the Security Council in resolution 1996 (2011) of 8 July 2011.[32] By resolution 2057 (2012) of 5 July 2012, the Security Council, while acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to extend the mandate of UNMISS as set out in paragraph 3 of resolution 1996 (2011) through 15 July 2013. The Council noted the priority of the mandated tasks of UNMISS in resolution 1996 (2011) for the protection of civilians and for the achievement of an improved security environment and urged UNMISS to

[29] See also, with regard to children and armed conflict in the Sudan, subsection (h) below.

[30] For more information about UNISFA, see http://www.un.org/en/peacekeeping/missions/unisfa/. See also the report of the Secretary-General on the Sudan and South Sudan (S/2012/877) and the reports of the Secretary-General on the situation in Abyei (S/2012/68, S/2012/175, S/2012/358, S/2012/583, S/2012/722 and S/2012/890).

[31] See letter dated 1 October 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council (S/2012/733, annex).

[32] For more information about UNMISS, see http://unmiss.unmissions.org/ and http://www.un.org/en/peacekeeping/missions/unmiss/. See also the report of the Secretary-General on the Sudan and South Sudan (S/2012/877); the reports of the Secretary-General on South Sudan (S/2012/140, S/2012/486 and S/2012/820); and the letter dated 13 November 2012 from the Chair of the Security Council Working Group on Children and Armed Conflict to the Secretary-General (S/2012/880, annex).

deploy its assets accordingly. The Council authorized UNMISS to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, to carry out its protection mandate as set out in resolution 1996 (2011), paragraphs 3 (b) (iv)-(vi). Pending the activation of the Joint Border Verification and Monitoring Mechanism and the Ad Hoc Committee of the Joint Political and Security Mechanism as called for in resolution 2046 (2012) of 2 May 2012, the Council requested UNMISS to observe and report on any flow of personnel, arms, and related materiel across the border with Sudan. The Council also welcomed the signing of a new action plan to end child recruitment by the Government of the Republic of South Sudan on 12 March 2012, acknowledged the measures taken by the Government of the Republic of South Sudan to implement the new action plan, and requested UNMISS to advise and assist the Government of the Republic of South Sudan in this regard. It further encouraged the Government to ratify and implement key international human rights treaties and conventions, including those related to women and children, refugees, and statelessness, and requested UNMISS, with other United Nations actors, to advise and assist the Government of the Republic of South Sudan in this regard.

(iii) *Other ongoing peacekeeping operations or missions*

a. Middle East

The United Nations Truce Supervision Organization (UNTSO) was established by resolution 50 (1948) on 29 May 1948 in order to supervise the observation of the truce in Palestine. UNTSO continued to operate in 2012.[33]

b. India and Pakistan

The United Nations Military Observer Group in India and Pakistan (UNMOGIP) was established by resolutions 39 (1948) and 47 (1948) of 20 January and 21 April respectively, in order to supervise, in the State of Jammu and Kashmir, the ceasefire between India and Pakistan. Following the India-Pakistan hostilities at the end of 1971 and a subsequent ceasefire agreement of 17 December of that year, the tasks of UNMOGIP have been to observe, to the extent possible, developments pertaining to the strict observance of the ceasefire of 17 December 1971 and to report thereon to the Secretary-General.[34] UNMOGIP continued to operate in 2012.

c. Kosovo

The United Nations Interim Administration Mission in Kosovo (UNMIK) was established by resolution 1244 (1999) on 10 June 1999, and was mandated to help ensure con-

[33] For more information on UNTSO, see http://untso.unmissions.org/ and http://www.un.org/en/peacekeeping/missions/untso/.

[34] For more information on UNMOGIP, see http://www.un.org/en/peacekeeping/missions/unmogip/.

ditions for a peaceful and normal life for all inhabitants of Kosovo and advance regional stability in the western Balkans.[35] UNMIK continued to operate in 2012.

(iv) *Peacekeeping missions or operations concluded in 2012*

Timor-Leste

The United Nations Integrated Mission in Timor-Leste (UNMIT) was established by Security-Council resolution 1704 (2006) of 25 August 2006.[36] In resolution 2037 (2012) of 23 February 2012 the Security Council decided to extend the mandate of UNMIT until 31 December 2012 and to endorse the plan of its phased drawdown, in accordance with the wishes of the Government of Timor-Leste, conditions on the ground and following the successful completion of the 2012 electoral process. The Council also requested, *inter alia*, UNMIT to continue to extend the necessary support, within its current mandate, for the preparation and implementation of the presidential and parliamentary elections, as requested by the Government of Timor-Leste, and called upon the international community to provide assistance in this process including through sending election observers and volunteers as requested by the Government of Timor-Leste.

In the same resolution, the Council underlined the importance of a coordinated approach to the justice sector reform and the ongoing need to increase Timorese ownership and strengthen national capacity in judicial line functions, including the training and specialization of national lawyers and judges, and emphasized the need for sustained support of the international community in capacity-building and strengthening of institutions in this sector.

In accordance with the request of the Security Council, the Secretary-General submitted a report assessing the security and political situation, and providing recommendations on the completion of the mission.[37] The Secretary-General reported that UNMIT entered into an innovative partnership with four United Nations country team members to carry out particular mandated activities from July to December 2012, with UNMIT financial support and arrangements set out in memorandums of understanding. These partnership arrangements, related to activities of ensuring security and stability, rule of law, justice and human rights, a culture of democratic governance and dialogue, and socioeconomic development. UNMIT completed its mandate on 31 December 2012.

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[35] For more information on UNMIK, see http://www.unmikonline.org/pages/default.aspx and http://www.un.org/en/peacekeeping/missions/unmik/. See also the reports of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2012/72, S/2012/275, S/2012/603 and S/2012/818); and the report to the United Nations on the operations of the Kosovo Force (S/2012/420, annex).

[36] For more information about UNMIT, see http://unmit.unmissions.org and http://www.un.org/en/peacekeeping/missions/past/unmit/. See also the reports of the Secretary-General on the United Nations Integrated Mission in Timor-Leste for the period from 20 September 2011 to 6 January 2012 (S/2012/43) and for the period from 7 January 2012 to 20 September 2012 (S/2012/765).

[37] S/2012/765.

(*b*) Political and peacebuilding missions

(i) *Political and peacebuilding missions established in 2012*

There were no new political or peacebuilding missions established in 2012.

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2012*

a. Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002.[38] On 22 March 2012, the Security Council decided by resolution 2041 (2012) to extend the mandate of UNAMA until 23 March 2013.

In the same resolution, the Council recognized that the renewed mandate of UNAMA took full account of the transition process and was in support of Afghanistan's full assumption of leadership and ownership in the security, governance and development areas, consistent with the understandings reached between Afghanistan and the international community in the London, Kabul and Bonn Conferences and the Lisbon Summit.[39] The Council requested UNAMA to assist the Government of Afghanistan on its way towards ensuring full Afghan leadership and ownership, as defined by the Kabul Process.[40] The Council further decided that UNAMA and the Special Representative of the Secretary-General, within their mandate and guided by the principle of reinforcing Afghan sovereignty, leadership and ownership would continue to lead and coordinate the international civilian efforts with a particular focus on, *inter alia*, (i) supporting at the request of the Afghan authorities, the organization of future Afghan elections; (ii) promoting through an appropriate UNAMA presence the implementation of the Kabul Process throughout the country including through enhanced cooperation with the United Nations Office on Drugs and Crime, and facilitate inclusion in and understanding of the Afghan Government's policies; and (iii) supporting the efforts of the Afghan Government in fulfilling its commitments to improve governance and the rule of law including transitional justice, budget execution and the fight against corruption, throughout the country.

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[38] For more information about UNAMA, see http://unama.unmissions.org. See also the reports of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, (A/66/728–S/2012/133, A/66/855–S/2012/462, A/67/354–S/2012/703 and A/67/619–S/2012/907).

[39] See letter dated 6 December 2011 from the Permanent Representatives of Afghanistan and Germany to the United Nations addressed to the Secretary-General (A/66/597–S/2011/762).

[40] See report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security (A/66/855–S/2012/462).

b. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by Security Council resolution 1500 (2003) of 14 August 2003.[41] By resolution 2061 (2012) of 25 July 2012, the Security Council decided, *inter alia*, to extend the mandate of UNAMI for a period of twelve months. The Council also decided that the Special Representative of the Secretary-General and UNAMI, at the request of the Government of Iraq, and taking into account the letter from the Minister of Foreign Affairs of Iraq to the Secretary-General,[42] should continue to pursue their mandate as stipulated in resolution 2001 (2011) of 28 July 2011. The Council expressed its intention to review the mandate of UNAMI in twelve months or sooner, if requested by the Government of Iraq.

c. Sierra Leone

The United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) was established by Security Council resolution 1829 (2008) of 4 August 2008.[43] On 12 September 2012, the Security Council decided by resolution 2065 (2012) to extend the mandate of UNIPSIL until 31 March 2013.

In the same resolution, the Security Council requested UNIPSIL, *inter alia*, to continue providing assistance to the Government of Sierra Leone and its electoral, democratic and security institutions, as requested, in the preparation and conduct of elections. The Council also requested UNIPSIL to continue preparations for its transition, and in this regard requested the Secretary-General to deploy an inter-agency technical assessment mission to Sierra Leone to conduct a review of progress made in the implementation of the mandate of UNIPSIL and to provide a report, for the consideration of the Council, containing detailed proposals and a recommended timeline for the transition, drawdown and exit strategy of UNIPSIL by no later than 15 February 2013.[44]

d. Central African Region

The United Nations Regional Office for Central Africa (UNOCA)[45] was established by an exchange of letters completed in August 2010 between the Secretary-General and the

[41] For more information about the activities of UNAMI, see http://www.uniraq.org. See also the second and third reports of the Secretary-General pursuant to resolution 2001 (2011) (S/2012/185 and S/2012/535, respectively); and the first report of the Secretary-General pursuant to resolution 2061 (2012) (S/2012/848).

[42] S/2012/520, annex.

[43] For more information about the activities of UNIPSIL, see http://unipsil.unmissions.org. See also the eighth and ninth reports of the Secretary-General on the United Nations Integrated Peacebuilding Office in Sierra Leone (S/2012/160 and S/2012/679, respectively).

[44] See also, statement by the President of the Security Council of 30 November 2012 (S/PRST/2012/25).

[45] For more information about UNOCA, see http://unoca.unmissions.org. See also the report of the Secretary-General on the situation of children and armed conflict affected by the Lord's Resistance Army (S/2012/365); and the reports of the Secretary-General on the activities of the United Nations Regional Office for Central Africa and on areas affected by the Lord's Resistance Army (S/2012/421 and S/2012/923).

Security Council.[46] By letter dated 13 August 2012 from the Secretary-General addressed to the President of the Security Council, the Secretary-General recommended to extend the mandate of UNOCA for an additional 18 months, until 28 February 2014.[47] The Secretary-General also indicated that with the extension of its mandate, UNOCA, in addition to its work on the Lord Resistance Army and on piracy in the Gulf of Guinea, would continue, *inter alia*, to carry out good offices roles and special assignments in countries of the subregion, on behalf of the Secretary-General, including in the areas of conflict prevention and peacebuilding efforts. The Security Council took note of the proposal of the Secretary-General.[48]

In its resolution 2039 (2012) of 29 February 2012, the Security Council requested the Secretary-General through UNOCA and the United Nations Office for West Africa (UNOWA),[49] to support States and subregional organizations in convening a joint Summit of Gulf of Guinea States in order to develop a comprehensive strategy to counter piracy and armed robbery at sea.

Furthermore, on 29 June 2012, the Security Council welcomed the development of the United Nations regional strategy to address the threat and impact of the activities of the Lord's Resistance Army[50] by UNOCA in collaboration with the African Union, United Nations missions and country teams in the LRA affected countries.[51] It urged UNOCA and other relevant United Nations presences to support the implementation of the strategy, as appropriate and within the limits of their mandates and capacities.

e. Libya[52]

The United Nations Support Mission in Libya (UNSMIL) was established by resolution 2009 (2011) on 16 September 2011, with the Council acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41.[53] By resolution 2040 (2012) of 12 March 2012, the Council took note of the recommendation of the Secretary-General for the modification and twelve month extension of the UNSMIL mandate.[54] The Council further recalled the letter of 6 March 2012 from Mr. Abdurrahim el-Keib, Prime Minister of Libya, to the Secretary-General,[55] and while acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of UNSMIL for a

[46] Exchange of letters between the Secretary-General and the President of the Security Council dated 11 December 2009 (S/2009/697) and 30 August 2010 (S/2010/457).

[47] S/2012/656.

[48] Letter dated 21 August 2012 from the President of the Security Council addressed to the Secretary-General (S/2012/657).

[49] For more information on UNOWA, see subsection (iii)(d) below.

[50] S/2012/481, annex.

[51] Statement by the President of the Security Council of 29 June 2012 (S/PRST/2012/18).

[52] See subsection (e)(ii)(e) below on action of Member States authorized by the Security Council and subsection (f)(x) on sanctions as concerning Libya.

[53] For more information about UNSMIL, see http://unsmil.unmissions.org. See also the reports of the Secretary-General on the United Nations Support Mission in Libya (S/2012/129 and S/2012/675).

[54] S/2012/129.

[55] S/2012/139, annex.

further period of twelve months, subject to review within 6 months, under the leadership of a Special Representative of the Secretary-General.

The Council further decided that the modified mandate of UNSMIL should be to assist the Libyan authorities to define national needs and priorities throughout Libya, and to match these with offers of strategic and technical advice where appropriate, and support Libyan efforts to, *inter alia*: (i) manage the process of democratic transition, including through technical advice and assistance to the Libyan electoral process and the process of preparing and establishing a new Libyan constitution; (ii) promote the rule of law and monitor and protect human rights, in accordance with Libya's international legal obligations; and (iii) counter illicit proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, clear explosive remnants of war, conduct demining programmes, secure and manage Libya's borders, and implement international conventions on chemical, biological and nuclear weapons and materials.

(iii) *Other ongoing political and peacebuilding missions in 2012*

a. Somalia[56]

In 2012, two missions were active in Somalia. First, the United Nations Political Office for Somalia (UNPOS),[57] created by the Secretary-General on 15 April 1995, which aims, in accordance with its revised mandate in resolution 1863 (2009) of 16 January 2009, to advance the cause of peace and reconciliation through contacts with Somali leaders, civic organizations and the States and organizations concerned.

On 24 January 2012, the Special Representative of the Secretary-General for Somalia and an UNPOS office moved back to Mogadishu after an absence of 17 years. By resolution 2036 (2012) of 22 February 2012, the Security Council welcomed the relocation to Mogadishu and encouraged the United Nations to achieve a more permanent, full relocation to Somalia when security conditions allowed.[58]

Second, the United Nations Support Office for AMISOM (UNSOA), which is a field support operation led by the United Nations Department of Field Support. Its mandate, as provided by Security Council resolution 1863 (2009) of 16 January 2009, is to deliver a logistics capacity support package to AMISOM (African Union Mission in Somalia) critical in achieving its operational effectiveness and in preparation for a possible United Nations peacekeeping operation.

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[56] See subsection (f)(iv) below on sanctions as concerning Somalia.

[57] For more information about UNPOS and UNSOA, see http://unpos.unmissions.org. See also the reports of the Secretary-General on the situation in Somalia (S/2012/283 and S/2012/643); the report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts (S/2012/50); and the special report of the Secretary-General on Somalia (S/2012/74).

[58] See also Statement by the President of the Security Council of 5 March 2012 (S/PRST/2012/4).

b. Middle East

The Office of the United Nations Special Coordinator for the Middle East (UNSCO), established by the Secretary-General on 1 October 1999,[59] continued to operate throughout 2012.[60]

c. Lebanon

The Secretary-General decided in 2000 to appoint a senior official to serve as his representative in Lebanon.[61] The title of the representative was subsequently changed to Personal Representative for southern Lebanon and to Special Coordinator for Lebanon, in 2005[62] and 2007,[63] respectively. The Special Coordinator for Lebanon continued to operate throughout 2012.[64]

d. West Africa

The United Nations Office for West Africa (UNOWA), originally established by the Secretary-General in 2002,[65] with subsequent extensions of its mandate in 2004,[66] 2007 [67] and 2010,[68]continued to operate throughout 2012.[69]

e. Central Asia

The United Nations Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA) was established on 10 December 2007 by a letter dated 7 May 2007 from the

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[59] Exchange of letters between the Secretary-General and the Security Council (S/1999/983 and S/1999/984).

[60] For more information about UNSCO, see http://www.unsco.org.

[61] S/2000/718.

[62] Letter dated 29 March 2005 from the Secretary-General to the President of the Security Council (S/2005/216).

[63] Letter dated 8 February 2007 from the Secretary-General to the President of the Security Council (S/2007/85).

[64] For more information about the activities of the Office of the United Nations Special Coordinator for Lebanon (UNSCOL), see http://unscol.unmissions.org.

[65] Exchange of letters between the Secretary-General and the President of the Security Council dated 26 November 2001 (S/2001/1128) and 29 November 2001 (S/2001/1129).

[66] Exchange of letters between the Secretary-General and the President of the Security Council dated 4 October 2004 (S/2004/797) and 25 October 2004 (S/2004/858).

[67] Exchange of letters between the Secretary-General and the President of the Security Council dated 28 November 2007 (S/2007/753) and 21 December 2007 (S/2007/754).

[68] Exchange of letters between the Secretary-General and the President of the Security Council dated 14 December 2010 (S/2010/660) and 20 December 2010 (S/2010/661).

[69] For more information about the activities of UNOWA, see http://unowa.unmissions.org. See also the report of the Secretary-General on the activities of the United Nations Office for West Africa (S/2012/510).

Secretary-General to the President of the Security Council.[70] UNRCCA continued to function throughout 2012.[71]

f. Guinea Bissau[72]

The United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) established by Security Council resolution 1876 (2009) of 26 June 2009 continued to operate throughout 2012.[73]

g. Central African Republic

On 1 January 2010, the United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA) succeeded the United Nations Peacebuilding Office in the Central African Republic (BONUCA),[74] which had been established by the Secretary-General on 15 February 2000. BINUCA continued to operate throughout 2012. [75]

h. Burundi

The United Nations Office in Burundi (BNUB), established by resolution 1959 (2010) of 16 December 2010, with a subsequent extension of its mandate until 15 February 2013 by resolution 2027 (2011) of 20 December 2011, continued to operate throughout 2012.[76]

(iv) *Political and peacebuilding missions concluded in 2012*

No political or peacebuilding missions were concluded in 2012.

(*c*) Other bodies

(i) *Cameroon-Nigeria Mixed Commission*

On 15 November 2002, the Secretary-General established the Cameroon-Nigeria Mixed Commission, at the request of the Presidents of Nigeria and Cameroon, to facilitate the implementation of the 10 October 2002 ruling of the International Court of Jus-

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[70] S/2007/279.

[71] For more information about UNRCCA, see http://unrcca.unmissions.org/.

[72] See subsections (f)(xii) below on sanctions concerning Guinea Bissau.

[73] For more information on UNIOGBIS, see http://uniogbis.unmissions.org/. See also the special report of the Secretary-General on the situation in Guinea-Bissau (S/2012/280); the report of the Secretary-General on developments in Guinea-Bissau and on the activities of the United Nations Integrated Peacebuilding Office in that country (S/2012/554); and the report of the Secretary-General on the restoration of constitutional order in Guinea-Bissau (S/2012/704).

[74] See letter dated 3 March 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/128) and statement by the President of the Security Council of 7 April 2009 (S/PRST/2009/5).

[75] For more information on BINUCA, see http://binuca.unmissions.org/. See also the reports of the Secretary-General on the situation in the Central African Republic and on the activities of the United Nations Integrated Peacebuilding Office in that country (S/2012/374 and S/2012/956).

[76] For more information on BNUB, see http://bnub.unmissions.org.

tice on the Cameroon-Nigeria boundary dispute. The mandate of the Mixed Commission included supporting the demarcation of the land boundary and delineation of the maritime boundary, facilitating the withdrawal and transfer of authority along the boundary, addressing the situation of affected populations and making recommendations on confidence-building measures. The Mixed Commission continued its work in 2012.[77]

(ii) *Commission of Inquiry to the Syrian Arab Republic*

In its resolution S-17/1, adopted on 23 August 2011 during the seventeenth special session of the Human Rights Council, the Council created an independent international commission of inquiry to investigate all alleged violations of international human rights law since July 2011 in the Syrian Arab Republic, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view of ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable.

By resolution 19/22 of 23 March 2012, the Council, *inter alia*, welcomed the reports of the commission of inquiry[78] and the recommendations made therein, and expressed profound concern about the commission's findings. The Council stressed the need to conduct an international, transparent, independent and prompt investigation into violations of international law with a view to hold to account those responsible for widespread, systematic and gross human rights violations, including those violations that may amount to crimes against humanity. The Council further decided to extend the mandate of the commission of inquiry and requested the commission to continue its work, to provide an oral update to the Council at an interactive dialogue at its twentieth session and to present also a written updated report at an interactive dialogue at its twenty-first session. The Council decided to transmit the updated reports of the commission of inquiry to all relevant United Nations bodies and the Secretary-General for appropriate action, and requested the Secretary-General to present a report on the implementation of resolution 19/22 to the Human Rights Council at its twentieth and twenty-first sessions.[79]

Through resolution S-19/1 of 1 June 2012 entitled "The deteriorating situation of human rights in the Syrian Arab Republic, and the recent killings in El-Houleh", adopted at the nineteenth special session of the Human Rights Council, the Council requested the commission to urgently conduct a comprehensive, independent and unfettered special inquiry, consistent with international standards, into the events in El-Houleh. The Council also requested the commission to provide a full report of the findings of its special inquiry to the Human Rights Council at its twentieth session, and to coordinate, as appropriate, with relevant United Nations mechanisms.

In its resolution 20/22 of 6 July 2012, the Council noted the oral update provided by the commission during the interactive dialogue held on 27 June 2012, including on its special inquiry into the events in El-Houleh and underscored the importance of the recommendation of the commission that the Syrian people, on the basis of broad, inclusive and

[77] For more information on the Commission's work in 2012, see the exchange of letters between the Secretary-General and the President of the Security Council (S/2012/954 and S/2012/955).

[78] A/HRC/S-17/2/Add.1 and A/HRC/19/69.

[79] A/HRC/20/37 and A/HRC/21/32.

credible consultations, should determine, within the framework provided by international law, the process and mechanisms to achieve reconciliation, truth and accountability for gross violations, as well as reparations and effective remedies for the victims.

By resolution 21/26 of 28 September 2012, the Council, *inter alia*, welcomed the report of the commission of inquiry[80] submitted pursuant to Human Rights Council resolution 19/22 and the recommendations contained therein. It decided to extend the mandate of the commission and requested it to present a written report on the situation of human rights in the Syrian Arab Republic at an interactive dialogue during the Council's twenty-second session. In addition, the Council requested the commission of inquiry to conduct and continuously update a mapping exercise of gross violations of human rights since March 2011, including an assessment of casualty figures, and to publish it periodically. Further, the Council condemned in the strongest terms the increasing number of massacres taking place in the Syrian Arab Republic, and requested the commission of inquiry to investigate all massacres.

(*d*) Missions of the Security Council

(i) *Haiti*

In a letter dated 8 February 2012, the President of the Security Council informed the Secretary-General of the Council's decision to send a mission to Haiti from 13 to 16 February 2012.[81]

Pursuant to its terms of reference,[82] the mission to Haiti, *inter alia*, assessed the implementation of relevant Security Council resolutions, in particular resolution 2012 (2011) of 14 October 2011, and reviewed the progress the Government of Haiti had made in addressing the interconnected challenges in the areas of stability and security, including strengthening the rule of law and protecting civilians; economic and social development; institutional reform and governance, including elections; border management; and human rights.[83]

(ii) *Liberia,[84] Côte d'Ivoire[85] and the Economic Community of West African States, and Sierra Leone*

In a letter dated 18 May 2012, the President of the Security Council informed the Secretary-General of the Council's decision to send a mission to Liberia, Côte d'Ivoire and

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[80] A/HRC/21/50.

[81] Letter dated 8 February 2012 from the President of the Security Council addressed to the Secretary-General (S/2012/82).

[82] *Ibid*., (S/2012/82, annex).

[83] For more information on the Security Council mission to Haiti, see the report of the Security Council mission to Haiti, 12–16 February 2012 (S/2012/534).

[84] See subsection (a)(ii)(e) above on peacekeeping operations and subsection (f)(iii) below on sanctions concerning Liberia.

[85] See subsection (a)(ii)(f) above on peacekeeping operations and subsection (f)(v) below on sanctions concerning Côte d'Ivoire.

the Economic Community of West African States (ECOWAS), and Sierra Leone from 19 to 24 May 2012, outlining in an annex to the letter the mission's terms of reference.[86]

The mission to Liberia, *inter alia*, reaffirmed the continued support of the Security Council for the Government and people of Liberia as they rebuild their country and strengthen the foundations of sustainable peace, constitutional democracy and economic development.

The mission to Côte d'Ivoire and ECOWAS, *inter alia*, assessed the progress made by the Government of Côte d'Ivoire with the assistance of UNOCI in stabilizing the security situation in Abidjan and the rest of the country. In a meeting held on 21 May 2012, the Security Council and ECOWAS agreed to develop an effective partnership on issues of common interest in the region, within the overarching framework of the partnership between the African Union Peace and Security Council and the Security Council.

The mission to Sierra Leone, *inter alia*, assessed the progress achieved by the national authorities and people of Sierra Leone in peacebuilding in a number of areas, including national reconciliation, the promotion of gender equality and the preparations for national and local elections on 17 November 2012 and underscored the importance of the country's national authorities responding proportionately to threats to the security of all citizens and of maintaining a commitment to uphold human rights and applicable international law.

(iii) *Timor-Leste*

In a letter dated 31 October 2012, the President of the Security Council informed the Secretary-General of the Council's decision to send a mission to Timor-Leste from 1 to 7 November 2012.[87]

In accordance with its terms of reference,[88] the mission to Timor-Leste, *inter alia*, encouraged the Government, the Parliament, the political parties and the people of Timor-Leste to continue to work together and to engage in an inclusive dialogue to promote the further consolidation of peace, democracy, the rule of law, security sector reform, sustainable social and economic development and national reconciliation in the country, including fostering the role of women in the process.[89]

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[86] Letter dated 18 May 2012 from the President of the Security Council addressed to the Secretary-General (S/2012/344).

[87] Letter dated 31 October 2012 from the President of the Security Council addressed to the Secretary-General (S/2012/793).

[88] *Ibid*., S/2012/793, annex.

[89] For more information on the Security Council mission to Timor-Leste, see the report of the Security Council mission to Timor-Leste, 3 to 6 November 2012 (S/2012/889)

(*e*) Action of Member States authorized by the Security Council

(i) *Authorization by the Security Council in 2012*

Mali[90]

By resolution 2056 (2012) of 5 July 2012, the Security Council condemned the forcible seizure of power from the democratically elected Government of Mali by some members of the Armed Forces of Mali on 22 March 2012. Acting under Chapter VII of the Charter of the United Nations, the Council, *inter alia*, expressed its full support to the efforts of the Economic Community of West African States (ECOWAS) and the African Union in Mali, with the support of the United Nations, and encouraged them to continue to coordinate closely with the transitional authorities of Mali for the restoration of constitutional order. The Council took note of the decisions of ECOWAS and the African Union to adopt targeted sanctions in Mali and reserved the right to consider appropriate measures as necessary.[91]

It further took note of the request of ECOWAS and the African Union for a United Nations Security Council mandate authorizing the deployment of an ECOWAS stabilization force in order to support the political process in Mali and assist in upholding the territorial integrity of Mali and in combating terrorism, and expressed its readiness to further examine the request of ECOWAS once additional information had been provided regarding the objectives, means and modalities of the envisaged deployment and other possible measures.[92]

By resolution 2071 (2012) of 12 October 2012,[93] the Security Council took note of the decisions and recommendation by ECOWAS to adopt targeted sanctions in Mali and expressed its readiness to consider appropriate measures as necessary.

In its resolution 2085 (2012) of 20 December 2012, the Security Council recalled the letters of the transitional authorities of Mali requesting the authorization of deployment through a Security Council resolution, under Chapter VII as provided by the United Nations Charter, of an international military force to assist the Armed Forces of Mali to recover the occupied regions in the north of Mali and stressing the need to support, including through such an international military force, the national and international efforts to bring to justice the perpetrators of war crimes and crimes against humanity committed in the north of Mali.[94]

The Council decided to authorize the deployment of an African-led International Support Mission in Mali (AFISMA) for an initial period of one year, which should take all necessary measures, in compliance with applicable international humanitarian law and

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[90] See also the report of the Secretary-General on the situation in Mali (S/2012/894).

[91] See the communiqués of the 314th and 316th African Union Peace and Security Council meetings on the situation in Mali (S/2012/209, enclosures).

[92] See letter dated 1 June 2012 from the Chairperson of the African Union to the Secretary-General (S/2012/439, annex).

[93] See also, with regard to Security Council resolution 2071 (2012), subsection (*g*)(v)(a) below.

[94] See the letters dated 28 September 2012 and 23 October 2012 from the Secretary-General addressed to the President of the Security Council (S/2012/727 and S/2012/784, annexes). See also the presidential statements of 26 March 2012 (S/PRST/2012/7) and 4 April 2012 (S/PRST/2012/9).

human rights law and in full respect of the sovereignty, territorial integrity and unity of Mali to, *inter alia*: (*a*) contribute to the rebuilding of the capacity of the Malian Defence and Security Forces; (*b*) support the Malian authorities in recovering the areas in the north of its territory under the control of terrorist, extremist and armed groups and in reducing the threat posed by terrorist organizations and associated extremist groups, while taking appropriate measures to reduce the impact of military action upon the civilian population; (*c*) transition to stabilisation activities to support the Malian authorities in maintaining security and consolidate State authority, protect the population, and create a secure environment for the civilian-led delivery of humanitarian assistance and the voluntary return of internally displaced persons and refugees. The Council called upon Member States, including from the Sahel region, to contribute troops to AFISMA in order to enable AFISMA to fulfil its mandate. The Council further called upon AFISMA, consistent with its mandate, to support national and international efforts, including those of the International Criminal Court, to bring to justice perpetrators of serious human rights abuses and violations of international humanitarian law in Mali.

In the same resolution, the Council took note of the listing of Movement of Unity and Jihad in Western Africa (MUJWA) on the Al-Qaida sanctions list established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) and further reiterated its readiness to continue to adopt further targeted sanctions, under the abovementioned regime, against those rebel groups and individuals who do not cut off all ties to Al-Qaida and associated groups, including Al-Qaida in Islamic Maghreb and MUJWA.[95]

Furthermore, the Council requested the Secretary-General to establish, in consultation with the Malian authorities, a multidisciplinary United Nations presence in Mali in order to provide coordinated and coherent support to the on-going political process and the security process, including support to the planning, deployment and operations of AFISMA.

(ii) *Changes in authorization and/or extension of time limits in 2012*

a. Afghanistan

In its resolution 2069 (2012) of 9 October 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the authorization of the International Security Assistance Force (ISAF),[96] as defined in resolution 1386 (2001) and 1510 (2003), for a period of twelve months until 13 October 2013. The Council further authorized Member States participating in ISAF to take all necessary measures to fulfil its mandate and welcomed the agreement between the Government of Afghanistan and countries contributing to ISAF to gradually transfer lead security responsibility in Afghanistan to the Afghan Government country-wide by the end of 2014 and the ongoing implementation of the transition process since July 2011.

[95] See also, with regard to the Al-Qaida and Taliban Sanctions Committee, subsection (*g*)(v)(a) below.

[96] For more information about ISAF, see quarterly reports to the Security Council on the operations of the International Security Assistance Force, contained in letters dated 12 March 2012 and 6 September 2012 from the Secretary-General addressed to the President of the Security Council (S/2012/150 and S/2012/692, annexes).

b. Bosnia and Herzegovina

By its resolution 2074 (2012) of 14 November 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the Member States acting through or in cooperation with the European Union to establish for a further period of twelve months, starting from the date of the adoption of the resolution, a multinational stabilization force (EUFOR ALTHEA)[97] as a legal successor to the stabilization force (SFOR) under unified command and control, which would fulfil its missions in relation to the implementation of annex 1-A and annex 2 of the Peace Agreement[98] in cooperation with the North Atlantic Treaty Organization (NATO) Headquarters presence in accordance with the arrangements agreed between NATO and the European Union as communicated to the Security Council in their letters of 19 November 2004, which recognized that EUFOR ALTHEA would have the main peace stabilization role under the military aspects of the Peace Agreement.

c. Somalia[99]

By resolution 2036 (2012) of 22 February 2012, the Security Council, acting under Chapter VII of the Charter, decided, *inter alia*, that in addition to the tasks set out in paragraph 9 of resolution 1772 (2007) the African Union Mission in Somalia (AMISOM)[100] should include establishing a presence in the four sectors set out in the AMISOM strategic concept of 5 January 2012,[101] and that AMISOM should be authorised to take all necessary measures as appropriate in those sectors in coordination with the Somali security forces to reduce the threat posed by Al Shabaab and other armed opposition groups in order to establish conditions for effective and legitimate governance across Somalia. The Council further decided that AMISOM should act in compliance with applicable international humanitarian and human rights law, in performance of this mandate and in full respect of the sovereignty, territorial integrity, political independence and unity of Somalia.

In its resolutions 2072 (2012) of 31 October and 2073 (2012) of 7 November 2012, the Security Council, acting under Chapter VII of the Charter, authorized the member States of the African Union to maintain the deployment of the AMISOM until 7 November 2012 and 7 March 2013, respectively. Through resolution 2073 (2012), the Council, also acting under Chapter VII of the Charter, authorized AMISOM to take all necessary measures, in compliance with applicable international humanitarian and human rights law, and in

[97] For more information about the European Union military mission in Bosnia and Herzegovina (EUFOR), see quarterly reports on the activities of EUFOR (S/2012/138, annexes).

[98] General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto, attachment to letter dated 29 November 1995 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (S/1995/999).

[99] See also with regard to acts of piracy off the coast of Somalia, subsection (i) on piracy and section 9 on the law of the sea.

[100] For more information about AMISOM, see the letter dated 23 March 2012 from the Secretary-General addressed to the President of the Security Council (S/2012/176, annex) and the special report of the Secretary-General on Somalia (S/2012/74).

[101] See letter dated 9 January 2012 from the Secretary-General addressed to the President of the Security Council (S/2012/19, annex).

full respect of the sovereignty, territorial integrity, political independence and unity of Somalia, to carry out its tasks as set out in paragraph 1 of the resolution.

d. Republic of the Sudan (Darfur)[102]

The African Union/United Nations Hybrid Operation in Darfur (UNAMID) was established and authorized by Security Council resolution 1769 (2007) of 31 July 2007. By resolution 2063 (2012) of 31 July 2012, the Security Council decided to extend the mandate of UNAMID as set out in resolution 1769 (2007), until 31 July 2013.

e. Libya[103]

By resolution 2040 (2012) of 12 March 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, *inter alia*, decided to terminate the authorization granted in paragraph 13 of resolution 1973 (2011) of 17 March 2011 to Member States to use all measures commensurate to the specific circumstances to carry out inspection pursuant to that paragraph. It decided further to terminate paragraph 14 of that resolution, and underscored the importance of the full implementation of the arms embargo imposed in paragraphs 9 and 10 of resolution 1970 (2011), as modified by resolution 2009 (2011).

(*f*) Sanctions imposed under Chapter VII of the Charter of the United Nations[104]

(i) *Iraq*

The Security Council Committee established pursuant to resolution 1518 (2003) of 24 November 2003 as the successor body to the Security Council Committee established pursuant to resolution 661 (1990) concerning Iraq and Kuwait, to identify senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled by them or by persons acting on their behalf, who were subject to the measures imposed by resolution 1483 (2003), continued its operations in 2012.[105]

(ii) *Democratic Republic of the Congo*

The Security Council Committee established pursuant to resolution 1533 (2004) of 12 March 2004 to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in paragraph 15 of resolution 1807 (2008), paragraph 6 of resolution 1857 (2008) and paragraph 4 of resolution 1896 (2009) continued its operations

[102] For more information about UNAMID, see subsection (*a*)(ii)(h) above.

[103] See also, with regard to Security Council resolution 2040 (2012), subsection (*b*)(ii)(e) above and subsection (*f*)(x) below.

[104] For more information on the sanction regimes established by the Security Council, see the Council's website relating to subsidiary organs at http://www.un.org/en/sc/subsidiary/.

[105] At the time of publication, the annual report of the Committee was forthcoming. For more information on the Committee, see http://www.un.org/sc/committees/1518/index.shtml.

in 2012 and submitted, on 31 December 2012, a final report on its work in 2012 to the Security Council.[106]

In resolution 2078 (2012) of 28 November 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to renew until 1 February 2014 the measures provided for in resolution 1807 (2008) relating to arms, transport, finance and travel. The Council also decided that the travel measures imposed by paragraph 9[107] of resolution 1807 (2008) would not apply in the following situations: (*a*) where the sanctions Committee established by resolution 1533 (2004) of 12 March 2004 determines in advance and on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation; (*b*) where the Committee concludes that an exemption would further the objectives of the Council's resolutions, that is peace and national reconciliation in the Democratic Republic of the Congo and stability in the region; (*c*) where the Committee authorises in advance, and on a case-by-case basis, the transit of individuals returning to the territory of the State of their nationality, or participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law; or (*d*) where such entry or transit is necessary for the fulfilment of judicial process.

In the same resolution, the Council expressed its intention to consider additional targeted sanctions against the leadership of the 23 March Movement (M23) and those providing external support to the M23 and those acting in violation of the sanctions regime and the arms embargo, and called on all Member States to submit, as a matter of urgency, listing proposals to the Committee established pursuant to resolution 1533 (2004).[108]

Furthermore, the Security Council decided to extend, for a period expiring on 1 February 2014, the mandate of Group of Experts set up by resolution 1533 (2004)[109] and requested the Group of Experts to fulfil its mandate as set out in paragraph 18 of resolution 1807 (2008) and expanded by resolution 1857 (2008), and to present to the Council, through the Committee, a written mid-term report by 28 June 2013, and a written final report before 13 December 2013.

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[106] Report of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo (S/2012/979, annex).

[107] The travel measures relate to the entry into or transit through a State's territory of designated persons.

[108] See also presidential statement of 19 October 2012 (S/PRST/2012/22) and Security Council resolution 2076 (2012) of 20 November 2012.

[109] The Group of Experts for the Democratic Republic of the Congo was set up by resolution 1533 (2004) with the mandate, *inter alia*, to examine and analyze information gathered by MONUC in the context of its monitoring mandate, and to gather and analyse all relevant information in the Democratic Republic of the Congo, countries of the region and, as necessary, in other countries, in cooperation with the governments of those countries, flows of arms and related materiel, as well as networks operating in violation of the measures imposed by paragraph 20 of resolution 1493 (2003). For information on the appointment of members to the Group of Experts, see letters from the Secretary-General to the President of the Security Council of 10 February (S/2012/85), 8 March (S/2012/143) and 31 December 2012 (S/2012/967), respectively.

(iii) *Liberia*

The Security Council Committee established pursuant to resolution 1521 (2003) of 22 December 2003, to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in the same resolution, as modified by resolutions 1532 (2004), 1683 (2006) and 1903 (2009), continued its operations in 2012. The Security Council Committee submitted, on 31 December 2012, a report on its work in 2012 to the Security Council.[110]

By resolution 2079 (2012) of 12 December 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, reaffirmed that the measures imposed by paragraph 1 of resolution 1532 (2004) concerning the freezing of assets remained in force, noted with serious concern the lack of progress with regards to the implementation of the financial measures imposed by paragraph 1 of resolution 1532 (2004), and demanded that the Government of Liberia make all necessary efforts to fulfil its obligations. The Council also decided to renew for a period of twelve months the measures on travel imposed by resolution 1521 (2003) and on arms imposed by resolutions 1521 (2003), 1683 (2006), 1731 (2006) and 1961 (2010). The Council decided to review any of the above measures at the request of the Government of Liberia, once the Government reports to the Council that the conditions set out in resolution 1521 (2003) for terminating the measures have been met, and provides the Council with information to justify its assessment.

In the same resolution, the Council further decided to extend the mandate of the Panel of Experts on Liberia appointed pursuant to paragraph 9 of resolution 1903 (2009) for a period of twelve months from the date of adoption of the resolution to, *inter alia*, conduct two follow-up assessment missions to Liberia and neighbouring States and to assess the impact, effectiveness, and continued need for the measures imposed by paragraph 1 of resolution 1532 (2004).[111]

(iv) *Somalia and Eritrea*

The Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia was established on 24 April 1992 to oversee the general and complete arms embargo imposed by Security Council resolution 733 (1992) and to undertake the tasks set out by the Security Council in paragraph 11 of resolution 751 (1992) and, subsequently, in paragraph 4 of resolution 1356 (2001) and paragraph 11 of resolution 1844 (2008). Following the adoption of resolution 1907 (2009), which imposed a sanctions regime on Eritrea and expanded its mandate, the Committee decided on 26 February 2010 to change its name to "Security Council Committee pursuant to resolution 751 (1992) and 1907 (2009) concerning Somalia and Eritrea".[112]

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[110] Report of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia (S/2012/980, annex).

[111] Reports of the United Nations Panel of Experts on Liberia (S/2012/448 and S/2012/901, enclosures).

[112] The expanded mandate of the Committee is delineated in paragraph 18 of resolution 1907 (2009), paragraph 13 of resolution 2023 (2011) and paragraph 23 of resolution 2036 (2012). For the report of the Committee covering its work during 2012, see letter dated 31 December 2012 from the Chair of the Committee addressed to the President of the Security Council (S/2012/976, annex).

In its resolution 2036 (2012) of 22 February 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that Somali authorities should take the necessary measures to prevent the export of charcoal from Somalia and that all Member States should take the necessary measures to prevent the direct or indirect import of charcoal from Somalia, whether or not such charcoal originated in Somalia. The Council further decided that all Member States should report to the Committee within 120 days of the adoption of the resolution on the steps they had taken towards effective implementation of such measures. It further requested the Monitoring Group re-established pursuant to resolution 2002 (2011)[113] to assess the impact of the charcoal ban in its final report.[114]

The Council also decided that the mandate of the Committee should also apply to the measures on charcoal and that the Monitoring Group's mandate should likewise be expanded. The Council considered that commerce in charcoal could pose a threat to the peace, security, or stability of Somalia, and therefore that the Committee could designate individuals and entities engaged in such commerce as subject to the targeted measures established by resolution 1844 (2008).[115]

By resolution 2060 (2012) of 25 July 2012, the Security Council, acting under Chapter VII of the Charter, decided, *inter alia*, that for a period of twelve months from the date of the resolution, and without prejudice to humanitarian assistance programmes conducted elsewhere, the obligations relating to the freezing of assets imposed on Member States in paragraph 3 of resolution 1844 (2008) should not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations and other designated entities. Similarly, the Council decided that the arms embargo imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) should not apply to supplies of weapons and military equipment, or the provision of assistance, solely for the support of or use by the United Nations Political Office for Somalia,[116] as approved in advance by the Committee established pursuant to resolution 751 (1992) and 1907 (2009). In addition, the Council decided that the Eritrea arms embargo imposed by paragraph 5 of resolution 1907 (2009) should not apply to protective clothing temporarily exported to Eritrea by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only. It also decided that such embargo should not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, as approved in advance by the Committee.

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[113] The Monitoring Group on Somalia was established pursuant to resolution 1519 (2003) to focus on ongoing arms embargo violations. Its mandate was extended and expanded by subsequent resolutions. After the adoption of resolution 1907 (2009) the Monitoring Group changed its name to Monitoring Group on Somalia and Eritrea.

[114] Somalia report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2002 (2011) (S/2012/544, annex).

[115] The targeted measures include arms embargo, travel ban and assets freeze.

[116] For more information on UNPOS see subsection (*b*)(iii)(a) above.

In the same resolution the Council decided to extend until 25 August 2013 the mandate of the Monitoring Group.[117]

(v) *Côte d'Ivoire*

The Security Council Committee established pursuant to resolution 1572 (2004) of 15 November 2004, to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in paragraph 14 of the same resolution, as modified by resolutions 1584 (2005), 1643 (2005) and 1946 (2010), continued its operations in 2012 and submitted, on 31 December 2012, a report on its work in 2012 to the Security Council.[118]

By resolution 2045 (2012) of 26 April 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to impose, for a period ending on 30 April 2013, measures on arms and related materiel, which replaced those previously imposed by paragraphs 7 and 8 of resolution 1572 (2004). It decided that those measures should no longer apply to the provision of training, advice and expertise related to security and military activities, as well as to the supplies of civilian vehicles to the Ivorian security forces. Furthermore, the Council decided to renew until 30 April 2013: the financial and travel measures imposed by paragraphs 9 to 12 of resolution 1572 (2004) and paragraph 12 of resolution 1975 (2011) as well as the measures preventing the importation by any State of all rough diamonds from Côte d'Ivoire imposed by paragraph 6 of resolution 1643 (2005). The Council also decided to renew the exemptions set out by paragraphs 16 and 17 of resolution 1893 (2009) with regard to the securing of samples of rough diamonds for scientific research purposes coordinated by the Kimberley Process and to review the measures decided in paragraphs 2, 3, 4 of resolution 2045 (2012), in light of the progress achieved in the stabilization throughout the country, by the end of the period ending on 30 April 2013.

In the same resolution, the Security Council decided to extend the mandate of the Group of Experts, as set out in paragraph 7 of resolution 1727 (2006),[119] until 30 April 2013 and requested the Secretary-General to take the necessary measures to support its action.

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[117] The current mandate of the Monitoring Group is delineated in paragraph 16 of resolution 2023 (2011), paragraph 23 of resolution 2036 (2012) and paragraph 13 of resolution 2060 (2012). For its 2012 reports, see Somalia report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2002 (2011) (S/2012/544, annex); Eritrea report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2002 (2011) (S/2012/545). For information on the appointment of members to the Monitoring Group, see letter of 13 August 2012 from the Secretary-General to the President of the Security Council (S/2012/631).

[118] Annual report of the Security Council Committee established pursuant to resolutions 1572 (2004) concerning Côte d'Ivoire (S/2012/981, annex) and midterm report of the Group of Experts on Côte d'Ivoire (S/2012/766, annex).

[119] The Group of Experts for Côte d'Ivoire was originally established by resolution 1584 (2005) with the mandate to, *inter alia*, monitor the effectiveness of the sanctions regime, in cooperation with UNOCI. For information on the appointment of members to the Group of Experts, see letter from the Secretary-General to the President of the Security Council of 23 June 2012 (S/2012/479).

(vi) *Republic of the Sudan*

The Security Council Committee established pursuant to resolution 1591 (2005) of 29 March 2005, to oversee the relevant sanctions measures concerning the Sudan and to undertake the tasks set out by the Security Council in sub-paragraph 3 (a) of the same resolution, continued its operations in 2012 and submitted, on 31 December 2012, a report on its work in 2012 to the Security Council.[120]

By resolution 2035 (2012) of 17 February 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, extended until 17 February 2013 the mandate of the Panel of Experts, originally appointed pursuant to Security Council resolution 1591 (2005).[121] In the same resolution, the Council noted the creation on 11 January 2012 of two additional states in Darfur, and confirmed that all previous references to North, South and West Darfur should apply to all the territory of Darfur, including the new states of Eastern and Central Darfur. The Council decided that the listing criteria applicable to individuals set out in paragraph 3 (c) of resolution 1591 (2005) should also apply to entities and that the exemptions in support of the implementation of the Comprehensive Peace Agreement set forth in paragraph 7 of resolution 1591 (2005) and further clarified in paragraph 8 (b) of resolution 1945 (2010) should no longer apply. In addition, the Council expressed its intention to impose targeted sanctions against individuals and entities that met the listing criteria in paragraph 3 (c) of resolution 1591 (2005), and encouraged the Panel of Experts, in coordination with the Joint African Union/United Nations Mediation, to provide to the Committee when appropriate the names of any individuals, groups, or entities that meet the listing criteria.

(vii) *Lebanon*

The Security Council Committee established pursuant to resolution 1636 (2005) of 31 October 2005, to register as subject to the travel ban and assets freeze imposed by paragraph 3 (a) of the resolution individuals designated by the international independent investigation Commission or the Government of Lebanon as suspected of involvement in the 14 February 2005 terrorist bombing in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafiq Hariri and 22 others, continued in existence in 2012.

(viii) *Democratic People's Republic of Korea*

The Security Council Committee established pursuant to resolution 1718 (2006) on 14 October 2006, to oversee the relevant sanctions measures concerning the Democratic People's Republic of Korea and to undertake the tasks set out in paragraph 12 of that same

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[120] Report of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan (S/2012/978, annex).

[121] The Panel of Experts for the Sudan was originally appointed pursuant to Security Council resolution 1591 (2005) with the mandate, *inter alia*, to assist the Committee in monitoring the implementation of the measures concerning the arms embargo set out in paragraph 9 of resolution 1556 (2004), the consolidated travel ban and freezing of assets set out in sub-paragraphs 3(f) and (g) of resolution 1591 (2005), and to make recommendations to the Committee on actions the Council may want to consider.

resolution and in resolution 1874 (2009), continued its operations in 2012 and submitted, on 31 December 2012, a report on its work to the Security Council.[122]

By presidential statement of 16 April 2012, the Security Council condemned the 13 April 2012 launch by the Democratic People's Republic of Korea (DPRK) and underscored that the satellite launch, as well as any launch that uses ballistic missile technology, even if characterized as a satellite launch or space launch vehicle, is a serious violation of Security Council resolutions 1718 (2006) and 1874 (2009). The Security Council demanded the DPRK not to proceed with any further launches using ballistic missile technology and to comply with resolutions 1718 (2006) and 1874 (2009) by suspending all activities related to its ballistic missile programme and in this context re-establish its pre-existing commitments to a moratorium on missile launches. Furthermore, the Council agreed to adjust the measures imposed by paragraph 8 of resolution 1718 (2006), as modified by resolution 1874 (2009), relating to arms, weapons of mass destruction, luxury goods, transport, finance and travel and directed the Committee to: designate additional entities and items; update the information contained on the Committee's list of individuals, entities, and items,[123] and update the Committee's annual workplan. The Security Council expressed its determination to take action accordingly in the event of a further DPRK launch or nuclear test.[124]

By resolution 2050 (2012) of 12 June 2012, the Security Council, acting under Article 41 of Chapter VII of the Charter of the United Nations, decided to extend until 12 June 2013 the mandate of the Panel of Experts established pursuant to resolution 1874 (2009).[125] The Council expressed its intent to review the mandate and take appropriate action regarding further extension no later than 12 June 2013.

(ix) *Islamic Republic of Iran*

The Security Council Committee established pursuant to resolution 1737 (2006) of 23 December 2006, to undertake the tasks set out in paragraph 18 of that same resolution, as modified by resolutions 1747 (2007), 1803 (2008) and 1929 (2010), concerning the effective implementation of measures relating to, *inter alia*, proliferation-sensitive nuclear and ballistic missile programmes, arms, finance and travel, continued its operations in 2012 and submitted oral reports to the Security Council.[126]

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[122] Report of the Security Council Committee established pursuant to resolution 1718 (2006) (S/2012/982, annex).

[123] S/2009/205 and INFCIRC/254/Rev.9/Part.1.

[124] S/PRST/2012/13. See also report of the Security Council Committee established pursuant to resolution 1718 (2006) (S/2012/287, annex).

[125] The Panel of Experts was appointed by the Secretary-General pursuant to paragraph 26 of resolution 1874 (2009) with the mandate, *inter alia*, to assist the Committee in the implementation of its mandate: to gather, examine and analyze information regarding the implementation of the measures imposed in resolution 1718 (2006), in particular incidents of non-compliance; and to make recommendations on actions the Council, or the Committee or Member States, may consider to improve implementation of the above-mentioned measures.

[126] Oral reports of the Chairman of the Security Council Committee established pursuant to resolution 1737 (2006) for the period 21 December 2011 to 20 March 2012 (S/PV.6737), 21 March to 11 June 2012 (S/PV.6786), 12 June to 12 September 2012 (S/PV.6839) and 13 September to 4 December 2012 (S/PV.6888).

By resolution 2049 (2012) of 7 June 2012, the Security Council, acting under Article 41 of Chapter VII of the Charter of the United Nations, extended the mandate of the Panel of Experts set up by resolution 1929 (2010) to 9 June 2013.[127] The Council expressed its intent to review the mandate and take appropriate action regarding further extension no later than 9 June 2013.

(x) *Libya*[128]

The Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya was established on 26 February 2011 to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in paragraph 24 of the same resolution. The mandate of the Committee was subsequently expanded by resolution 1973 (2011). On 23 March 2012, the Committee submitted to the Security Council a report pursuant to paragraph 5 of resolution 2017 (2011), concerning the proliferation of arms and related materiel of all types from Libya in the region.[129]

By resolution 2040 (2012) of 12 March 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to terminate the authorization granted in paragraph 13 of resolution 1973 (2011) to Member States to use all measures commensurate to the specific circumstances to carry out inspections to ensure the strict implementation of the imposed arms embargo. It further decided to terminate paragraph 14 of that resolution regarding such inspections on the high seas, and underscored the importance of the full implementation of the arms embargo imposed in paragraphs 9 and 10 of resolution 1970 (2011), as modified by resolution 2009 (2011).

The Council further directed the Committee, in consultation with the Libyan authorities, to review continuously the remaining measures concerning asset freeze imposed by resolutions 1970 (2011) and 1973 (2011), as modified by resolution 2009 (2011), with respect to the Libyan Investment Authority (LIA) and the Libyan Africa Investment Portfolio (LAIP). It decided that the Committee should, in consultation with the Libyan authorities, lift the designation of these entities as soon as practical to ensure the assets are made available to and for the benefit of the people of Libya.

In the same resolution, the Council also decided to extend and modify the mandate of the Panel of Experts established by resolution 1973 (2011) and to further adjust the mandate to create for a period of one year a Panel of up to 5 experts under the direction of the Committee to, *inter alia*: (*a*) assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011); (*b*) gather, examine and analyse information from States, relevant United Nations bodies, regional organizations and other interested

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[127] The Panel of Experts was set up by resolution 1929 (2010) to, *inter alia*, assist the Committee in the implementation of its mandate: to gather, examine and analyze information regarding the implementation of the measures decided in resolutions 1737 (2006), 1747 (2007), 1803 (2008), in particular incidents of non-compliance; and to make recommendations on actions the Council, or the Committee or Member States, may consider to improve implementation of the relevant measures.

[128] See also, with regard to Security Council resolution 2040 (2012), subsections (*b*)(ii)(e) and (*e*)(ii)(e) above.

[129] Consolidated working document on the implementation of paragraph 5 of Security Council resolution 2017 (2011) 16 March 2012 (S/2012/178, annex).

parties regarding the implementation of the measures decided in resolutions 1970 (2011), 1973 (2011) and 2009 (2011) relating to arms, travel and finance, in particular incidents of non-compliance; (*c*) and make recommendations on actions that the Council, the Committee, the Libyan authorities or other States may consider to improve implementation of the relevant measures. The Council encouraged the Panel to continue its investigations regarding sanctions non-compliance, including illicit transfers of arms and related materiel to and from Libya and the assets of individuals subject to the asset freeze.

(xi) *Afghanistan*

The Security Council Committee established pursuant to resolution 1988 (2011) on 17 June 2011 to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in paragraph 30 of the same resolution, continued its operations in 2012 and submitted, on 31 December 2012, a report on its work in 2012 to the Security Council.[130]

By resolution 2082 (2012) of 17 December 2012, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that all States should take the following measures with respect to individuals and entities designated prior to the date of adoption of resolution 1988 (2011) as the Taliban, as well as other individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan as designated by the Committee established in paragraph 30 of resolution 1988 (2011): freeze without delay the funds and other financial assets or economic resources of designated individuals, undertakings and entities; prevent the entry into or transit through their territories by designated individuals; and prevent the direct or indirect supply, sale and transfer from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types, spare parts, and technical advice, assistance, or training related to military activities, to designated individuals, groups, undertakings and entities. The Council also decided that all Member States could make use of the provisions set out in paragraphs 1 and 2 of resolution 1452 (2002), as amended by resolution 1735 (2006) regarding available exemptions with regard to asset freeze measures, and encouraged their use by Member States. The Council further directed the Committee to remove expeditiously individuals and entities on a case-by-case basis that no longer met the listing criteria outlined in paragraph 2 of the resolution. The Council also decided, *inter alia*, in order to assist the Committee in fulfilling its mandate, that the 1267 Monitoring Team, established pursuant to paragraph 7 of resolution 1526 (2004), would also support the Committee for a period of thirty months with the mandate set forth in the annex of resolution 2082 (2012), and requested the Secretary-General to make any necessary arrangements to that effect.

(xii) *Guinea-Bissau*

By resolution 2048 (2012) of 18 May 2012, the Security Council, acting under Article 41 of Chapter VII of the Charter of the United Nations, decided, *inter alia*, that all Member

[130] Report of the Security Council Committee established pursuant to resolution 1988 (2011) (S/2012/970, annex).

States should take the necessary measures to prevent the entry into or transit through their territories of individuals listed in the annex of the resolution or designated by the Committee established pursuant to paragraph 9 of the same resolution. Exemptions on grounds of, *inter alia*, humanitarian need, judicial process, and furthering peace and stability were provided for.[131]

The Council also established a new Sanctions Committee consisting of all the members of the Council to, *inter alia*, monitor the implementation of the measures imposed by resolution 2048 (2012), designate the individuals subject to the measures and consider requests for exemptions. On 31 December 2012, the Committee transmitted a report to the Security Council containing an account of its activities undertaken from 18 May to 31 December 2012.[132]

(*g*) Terrorism

(i) *The United Nations Global Counter-Terrorism Strategy*

The third biennial review of the United Nations Global Counter-Terrorism Strategy took place on 28 and 29 June 2012. On 29 June 2012, the General Assembly adopted, without a vote, resolution 66/282 entitled "The United Nations Global Counter-Terrorism Strategy Review", in which it, *inter alia*, reaffirmed the United Nations Global Counter-Terrorism Strategy[133] and its four pillars, and called upon Member States, the United Nations and other appropriate international, regional and subregional organizations to step up their efforts to implement the Strategy in an integrated and balanced manner and in all its aspects. The Assembly also took note of the report of the Secretary-General on this item[134] as well as of measures that Member States and relevant international, regional and subregional organizations had adopted within the framework of the Strategy, as presented in the report of the Secretary-General and at the third biennial review of the Strategy, all of which strengthened cooperation to fight terrorism, including through the exchange of best practices.

The Assembly called upon States that had not done so to consider becoming parties in a timely manner to the existing international conventions and protocols against terrorism, and upon all States to make every effort to conclude a comprehensive convention on international terrorism and recalled the commitments of Member States with regard to the implementation of General Assembly and Security Council resolutions relating to international terrorism.

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[131] Fore more information on the situation in Guinea-Bissau, see the special report of the Secretary-General on the situation in Guinea-Bissau (S/2012/280) and the report of the Secretary-General on the restoration of constitutional order in Guinea-Bissau (S/2012/704).

[132] Report of the Security Council Committee established pursuant to resolution 2048 (2012) concerning Guinea-Bissau (S/2012/975, annex).

[133] General Assembly resolution 60/288 of 8 September 2006.

[134] United Nations Global Counter-Terrorism Strategy: activities of the United Nations system in implementing the Strategy (A/66/762).

(ii) *United Nations High-Level Meeting on Countering Nuclear Terrorism, with a Specific Focus on Strengthening the Legal Framework*

The United Nations High-Level Meeting on Countering Nuclear Terrorism with a Specific Focus on Strengthening the Legal Framework was held on 28 September 2012 at the United Nations Headquarters in New York.[135] The High-Level Meeting had two objectives: to strengthen the legal framework to prevent nuclear terrorism; and to enhance capacity-building to assist States in ensuring the effective implementation of their international obligations. Participants emphasized, *inter alia*, the importance of increasing the number of States parties to the instruments that comprise the multilateral counter-terrorism legal framework, in particular the International Convention for the Suppression of Acts of Nuclear Terrorism, 2005[136] and the Convention on the Physical Protection of Nuclear Material, 1979.[137]

(iii) *Security Council*

By presidential statement of 19 April 2012,[138] the Security Council recognized the importance of the 2012 and 2010 Nuclear Security Summits, the respective Summit Communiqués and the 2010 Nuclear Security Summit Work Plan. It welcomed the commitments made by Summit participants to take national actions, as appropriate, to increase nuclear security domestically and to work through bilateral and multilateral mechanisms, in particular the International Atomic Energy Agency (IAEA), to improve nuclear security and encourages all States to take national actions to this end.[139] The Council called upon all States parties to the Convention on the Physical Protection of Nuclear Material to ratify the Amendment[140] to the Convention as soon as possible and encouraged them to act in accordance with the objectives and purposes of the Amendment until such time it entered into force. It also encouraged all States that had not yet done so to adhere to the Convention and adopt its Amendment as soon as possible. The Council further encouraged all States that had not yet done so to become party to the International Convention for the Suppression of Acts of Nuclear Terrorism and encouraged discussions among States parties to consider measures to effectively implement the Convention.

By presidential statement of 4 May 2012,[141] the Security Council, *inter alia*, reaffirmed that Member States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law. It underscored that effective counter-terrorism measures and respect for human rights, fundamental freedoms and the rule of law are complementary

[135] For more information, see the webpage of the Counter-Terrorism Implementation Task Force at http://www.un.org/en/terrorism/ctitf/hlm-nuclear.shtml.

[136] United Nations, *Treaty Series*, vol. 2445, p. 89.

[137] *Ibid*., vol. 1456, p. 101.

[138] S/PRST/2012/14.

[139] For more information, see Communiqué of the 2012 Seoul Nuclear Security Summit (S/2012/274, annex).

[140] For the text of the Amendment, see GOV/INF/2005/10-GC(49)/INF/6.

[141] S/PRST/2012/17.

and mutually reinforcing, and are an essential part of a successful counter-terrorism effort, and noted the importance of respect for the rule of law so as to effectively prevent and combat terrorism. The Council stressed the importance of the continued implementation of the United Nations Global Counter-Terrorism Strategy in an integrated manner and in all its aspects. It also emphasized that sanctions are an important tool under the Charter in the international fight against terrorism, and underlined the importance of prompt and effective implementation of relevant sanctions measures. In this context, the Council reiterated its continued commitment to fair and clear procedures and welcomed the recent improvements to the procedures of the Committee established pursuant to resolution 1267 (1999) and 1989 (2011), in particular regarding the effective and valuable work of the Office of the Ombudsperson established pursuant to resolution 1904 (2009).

(iv) *General Assembly*

On 3 December 2012, the General Assembly adopted resolution 67/44 entitled "Measures to prevent terrorists from acquiring weapons of mass destruction" without a vote, upon the recommendation of the First Committee. The Assembly called upon all Member States to support international efforts to prevent terrorists from acquiring weapons of mass destruction and their means of delivery. It appealed to all Member States to consider early accession to and ratification of the International Convention for the Suppression of Acts of Nuclear Terrorism and further urged them to take and strengthen national measures, as appropriate, to prevent terrorists from acquiring weapons of mass destruction, their means of delivery and materials and technologies related to their manufacture.

(v) *Security Council counter-terrorism and non-proliferation committees*

a. Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities

The 1267 Committee was first established by Security Council resolution 1267 (1999) of 15 October 1999 and set forth a sanctions regime concerning the Taliban. The regime was modified and strengthened by subsequent resolutions, including resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009) and 1989 (2011) so that the sanctions measures would be applicable to designated individuals and entities associated with Al-Qaida, wherever located.[142]

In its resolution 2071 (2012) of 12 October 2012,[143] the Security Council, while acting under Chapter VII of the Charter of the United Nations, decided that the Committee should take decisions on requests of Member States to add to the Al-Qaida sanctions list names of individuals, groups, undertakings, and entities in Mali that were associated with Al-Qaida, in accordance with resolutions 1267 (1999) and 1989 (2011).

[142] Pursuant to resolution 1988 (2011), the Taliban, and other individuals, groups, undertakings and entities associated with them, as previously included in Section A and Section B of the Consolidated List established pursuant to resolutions 1267 (1999) and 1333 (2000) would no longer be part of the Consolidated List but be covered by a separate sanctions regime.

[143] See also, with regard to Security Council resolution 2071 (2012), subsection (*e*)(i) above.

By resolution 2083 (2012) of 17 December 2012, the Security Council, also acting under Chapter VII of the Charter, decided, *inter alia*, that all States should take the measures relating to the assets freeze, travel ban and arms embargo as previously imposed by paragraph 8 (c) of resolution 1333 (2000), paragraphs 1 and 2 of resolution 1390 (2002), and paragraphs 1 and 4 of resolution 1989 (2011), with respect to Al-Qaida and other individuals, groups, undertakings and entities associated with them. The Council also encouraged Member States to make use of the provisions regarding available exemptions to the assets freeze provided for in paragraph 1 (a), on grounds relating to necessary basic or extraordinary expenses as set out in paragraphs 1 and 2 of resolution 1452 (2002), as amended by resolution 1735 (2006). It further authorized the Focal Point mechanism established in resolution 1730 (2006) to receive exemption requests submitted by, or on behalf of, an individual, group, undertaking or entity on the Al-Qaida Sanctions List for the Committee's consideration.

In the same resolution, the Council decided to extend the mandate of the Office of the Ombudsperson, established by resolution 1904 (2009) for a period of thirty months from the date of adoption of the resolution. In order to assist the Committee in fulfilling its mandate, as well as to support the Ombudsperson, the Council also decided to extend the mandate of the current New York-based Monitoring Team and its members, established pursuant to paragraph 7 of resolution 1526 (2004), for a further period of thirty months.[144]

The Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) transmitted a report to the Security Council containing an account of its activities from 1 January to 31 December 2012.[145]

b. Counter-Terrorism Committee

The Counter-Terrorism Committee (CTC) was established pursuant to Security Council resolution 1373 (2001) of 28 September 2001, in the wake of the 11 September terrorist attacks in the United States of America, to bolster the ability of United Nations Member States to prevent terrorist acts both within their borders and across regions.[146]

The CTC Executive Directorate submitted a report on the activities and achievements of the CTC and the Executive Directorate from 2011 to 2012, including recommendations for future activities.[147]

c. 1540 Committee (non-proliferation of weapons of mass destruction to non-State actors)

On 28 April 2004, the Security Council adopted resolution 1540 (2004) by which it decided that all States would refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery; and established a Committee to report on the implementation of the same resolution. The mandate of the

[144] Security Council resolution 2083 (2012), annexes I and II.

[145] S/2012/930, annex.

[146] See also Security Council resolution 1624 (2005) of 14 September 2005.

[147] S/2012/465, annex.

Committee was subsequently extended by resolutions 1673 (2006), 1810 (2008) and 1977 (2011) of 20 April 2011 until 25 April 2021.

By resolution 2055 (2012) of 29 June 2012, the Council requested the Secretary-General to increase the size of the Group of Experts established by resolution 1977 (2011) to assist the 1540 Committee in carrying out its mandate from eight to nine experts.

(*h*) Humanitarian law and human rights in the context of peace and security

(i) *Children and armed conflict*

In resolution 2068 (2012) of 19 September 2012, the Security Council, *inter alia*, strongly condemned all violations of applicable international law involving the recruitment and use of children by parties to armed conflict as well as their re-recruitment, killing and maiming, rape and other sexual violence, abductions, attacks on schools and/or hospitals as well as denial of humanitarian access by parties to armed conflict and demanded that all relevant parties immediately put an end to such practices and take special measures to protect children. It expressed deep concern that certain perpetrators persisted in committing violations and abuses against children in situations of armed conflict in open disregard of its resolutions on the matter, and in that regard, called upon Member States concerned to bring to justice those responsible for such violations and reiterated its readiness to adopt targeted and graduated measures against persistent perpetrators, taking into account relevant provisions of its resolutions 1539 (2004), 1612 (2005), 1882 (2009) and 1998 (2011). The Council requested the Secretary-General to submit a report by June 2013 on the implementation of its resolutions and presidential statements on children and armed conflict, including the present resolution.[148]

The Security Council Working Group on Children and Armed Conflict was established pursuant to Security Council resolution 1612 (2005) of 26 July 2005. Consisting of the 15 Security Council members, the Working Group reviews reports on children in armed conflict in specific country-situations, progress made in the implementation of action plans to end violations against children, and other relevant information. In 2012, it issued four conclusions on Sudan,[149] South Sudan,[150] Sri Lanka[151] and Colombia[152] respectively.

[148] For the 2012 report of the Secretary-General on this topic covering the period from January to December 2011, see A/66/782-S/2012/261. For the report of the Special Representative of the Secretary-General for Children and Armed Conflict to the General Assembly, see A/67/256.

[149] S/AC.51/2012/1.

[150] S/AC.51/2012/2.

[151] S/AC.51/2012/3.

[152] S/AC.51/2012/4.

(ii) *Women and peace and security*[153]

On 23 February 2012, the President of the Security Council issued a statement in connection with consideration of the item "Women and peace and security".[154] The Security Council, *inter alia*, thanked the Secretary-General for his report entitled "Conflict-Related Sexual Violence"[155] and urged all parties to conflict to comply fully with their obligations under applicable international law, including the prohibition of all forms of sexual violence. The Council reiterated that the fight against impunity for the most serious crimes of international concern committed against women and girls had been strengthened through the work of the International Criminal Court, ad hoc and mixed tribunals, as well as specialized chambers in national tribunals. The Council further reiterated its intention to enhance its efforts to fight impunity and uphold accountability for serious crimes against women and girls with appropriate means.

Through a presidential statement of 31 October 2012,[156] the Council, *inter alia*, urged all parties to fully comply with their obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, 1979,[157] and the Optional Protocol thereto, 1999,[158] and strongly encouraged States that had not ratified or acceded to the Convention and Optional Protocol thereto to consider doing so. The Council also took note of the report of the Secretary-General on Women and Peace and Security[159] for the purpose of implementation of resolution 1325 (2000). The Security Council reiterated its strong condemnation of all violations of applicable international law committed against women and girls in armed conflict and post-conflict situations and urged the complete cessation by all parties of such acts with immediate effect. It also urged Member States to bring to justice those responsible for crimes of this nature.

(*i*) Piracy

On 21 November 2012, the Security Council adopted resolution 2077 (2012) whereby it welcomed the report of the Secretary-General submitted pursuant to Security Council resolution 2020 (2011)[160] on the implementation of that resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia. It noted the several requests from Somali authorities for international assistance to counter piracy off its coast, including the letter of 5 November 2012, from the Permanent Representative of Somalia to the United Nations requesting that the provisions of resolution 1897 (2009) be renewed for an additional twelve months. Acting under Chapter VII of the Charter of the United Nations, the Council requested the Somali authorities, with assistance from the

[153] For more information on the legal activities of the United Nations as it relates to women, see section 6 of the present chapter.

[154] S/PRST/2012/3.

[155] S/2012/33.

[156] S/PRST/2012/23.

[157] United Nations, *Treaty Series*, vol. 1249, p. 13.

[158] *Ibid*., vol. 2131, p. 83.

[159] S/2012/732.

[160] S/2012/783.

Secretary-General and relevant United Nations entities, to pass a complete set of counter-piracy laws without further delay, and to declare an Exclusive Economic Zone in accordance with the United Nations Convention on the Law of the Sea, 1982.[161] In addition, the Council decided to renew for a further period of twelve months the authorizations granted[162] to States and regional organizations cooperating with Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by Somali authorities to the Secretary-General, to:

(*a*) enter into the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and

(*b*) use, within the territorial waters of Somalia, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery at sea.

It further affirmed that the authorizations renewed in the resolution applied only with respect to the situation in Somalia and should not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations, under the United Nations Convention on the Law of the Sea, with respect to any other situation, and underscored in particular that this resolution should not be considered as establishing customary international law.

The Council reiterated its decision to continue its consideration, as a matter of urgency, of the establishment of specialized anti-piracy courts in Somalia and other States in the region with substantial international participation and/or support, as set forth in resolution 2015 (2011), and the importance of such courts having jurisdiction over not only suspects captured at sea, but also anyone who incites or intentionally facilitates piracy operations, including key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks. The Council further urged States parties to the United Nations Convention on the Law of the Sea and to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,[163] to implement fully their relevant obligations under these Conventions and customary international law.[164]

(*j*) Transnational organized crime

On 21 February 2012, the President of the Security Council issued a statement in connection with the item "Peace and Security in Africa", with focus on the impact of transnational organized crime on peace, security and stability in West Africa and the Sahel Region.[165] The Security Council, *inter alia*, called on States that had not yet ratified

[161] United Nations, *Treaty Series*, vol. 1833, p. 3.

[162] As set out in Security Council resolutions 1846 (2008), 1851 (2008), and renewed in resolutions 1897 (2009), 1950 (2010) and 2020 (2011).

[163] United Nations, *Treaty Series*, vol. 1678, p. 221.

[164] See also with regard to piracy, statement by the President of the Security Council of 19 November 2012 (S/PRST/2012/24).

[165] S/PRST/2012/2.

or implemented the relevant international conventions to do so. The Council reaffirmed its commitment to international law and the Charter of the United Nations and to an international order based on the rule of law and international law. In this regard, the Security Council stressed the importance of implementing relevant international agreements, and of strengthening international, regional and transregional cooperation, including capacity building in justice and security institutions in order to investigate and prosecute, as appropriate, persons and entities responsible for these crimes.

On 25 April 2012, the President of the Security Council issued a statement in connection with the item entitled "Threats to international peace and security",[166] in which the Council, *inter alia*, acknowledged that distinct strategies were required to address threats posed by illicit cross-border trafficking and movement. It nevertheless observed that illicit cross-border trafficking and movement are often facilitated by organized criminal groups and networks and further noted that such activities could be addressed by improving Member States' abilities to secure their borders. The Council called on Member States to fully comply with relevant obligations under applicable international law, including human rights and international refugee and humanitarian law, relating to securing their borders against illicit cross-border trafficking and movement, including obligations stemming from relevant resolutions of the Security Council adopted under Chapter VII of the United Nations Charter.

3. Disarmament and related matters[167]

(*a*) Disarmament machinery

(i) *Disarmament Commission*

The United Nations Disarmament Commission, a subsidiary organ of the General Assembly with a general mandate on disarmament questions, is the only body composed of all Member States of the United Nations for in-depth deliberation on relevant disarmament issues.

The Commission held its organizational session for 2012 in New York on 19 January 2012.[168] The Commission then met in New York from 2 to 20 April 2012 and held 10 plenary meetings.[169] At its meeting on 5 April 2012, the Commission adopted the agenda which included the items "Recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons" and "Practical confidence-building measures in the field of conventional weapons".

From 3 to 5 April, the Disarmament Commission held a general exchange of views on all agenda items.[170] Working Groups I and II held seven meetings, from 9 to 18 April

[166] S/PRST/2012/16.

[167] For more information about disarmament and related matters, see *The United Nations Disarmament Yearbook*, vol. 37, 2012 (United Nations publication, Sales No. E.13.IX.1). Also available at http://www.un.org/disarmament.

[168] See A/CN.10/PV.318.

[169] See A/CN.10/PV.319–328.

[170] See A/CN.10/PV.321–323 and 325.

2012, to discuss the agenda items entitled "Recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons" and "Practical confidence-building measures in the field of conventional weapons", respectively.

The Commission had before it the annual report of the Conference on Disarmament for 2011,[171] together with all the official records of the sixty-sixth session of the General Assembly relating to disarmament matters, as well as working papers relating to the substantive questions on its agenda.[172]

On 20 April 2012, the Commission adopted, by consensus, the reports of its subsidiary bodies and the conclusions contained therein. There were no recommendations put forward by the Commission. On the same day, the Commission adopted, as a whole, its report to be submitted to the sixty-seventh session of the General Assembly.[173]

(ii) *Conference on Disarmament*[174]

The Conference on Disarmament met from 23 January to 30 March, 14 May to 29 June and 30 July to 14 September 2012, during which it held thirty plenary meetings. On 24 January 2012, the Conference adopted its agenda for the 2012 session,[175] which included, *inter alia*, the items "Cessation of the nuclear arms race and nuclear disarmament", "Prevention of nuclear war, including all related matters", "Prevention of an arms race in outer space", "Effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", "New types of weapons of mass destruction and new systems of such weapons; radiological weapons", "Comprehensive programme of disarmament" and "Transparency in armaments". Throughout the 2012 session successive presidents of the Conference conducted intensive consultations with a view to reaching consensus on a programme of work on the basis of relevant proposals but no consensus was reached on a programme of work for the 2012 session. On 22 May 2012, the President of the Conference, Ambassador Minelik Alemu Getahun (Ethiopia), presented a schedule of activities which foresaw discussions on all agenda items. This schedule was followed by the Conference for the remainder of the 2012 session.[176] On 13 September 2012, the Conference adopted its annual report and transmitted it to the General Assembly for its consideration.[177]

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[171] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 27* (A/66/27).

[172] *Ibid, Sixty-seventh Session, Supplement No. 42* (A/67/42), chapter III. B.

[173] *Ibid*.

[174] The Conference on Disarmament, established in 1979 as the single multilateral disarmament negotiating forum of the international community, was a result of the First Special Session on Disarmament of the United Nations General Assembly in 1978.

[175] CD/1928.

[176] CD/WP.571/Rev.1.

[177] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 27* (A/67/27).

(iii) *General Assembly*

On 3 December 2012, the General Assembly adopted, on the recommendation of the First Committee, three resolutions and two decisions[178] concerning institutional activities related to the disarmament machinery, one of which is highlighted below.

By resolution 67/72 entitled "Report of the Conference on Disarmament", the General Assembly, *inter alia*, reaffirmed the role of the Conference on Disarmament as the sole multilateral disarmament negotiating forum of the international community. The Assembly called upon the Conference on Disarmament to further intensify consultations and explore possibilities for overcoming its ongoing deadlock by adopting and implementing a balanced and comprehensive programme of work at the earliest possible date during its 2013 session. In this regard, it welcomed the decision of the Conference on Disarmament to request the current President and the incoming President to conduct consultations during the intersessional period. It requested all States members of the Conference on Disarmament to cooperate with the current President and successive Presidents in their efforts to guide the Conference to the early commencement of its substantive work, including negotiations, in its 2013 session. The Assembly also recognized the importance of continuing consultations on the question of the expansion of the membership of the Conference on Disarmament.

(iv) *Security Council*[179]

By presidential statement of 19 April 2012, the Security Council reaffirmed that proliferation of weapons of mass destruction, and their means of delivery, constitutes a threat to international peace and security. It also reaffirmed its support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, chemical or biological weapons and the importance for all States parties to these treaties to implement them fully in order to promote international stability. The Council further endorsed the work carried out by the Committee established pursuant to resolution 1540 (2004), and, in that regard, recalled resolution 1977 (2011) which extended the mandate of the 1540 Committee for ten years.

(*b*) Nuclear disarmament and non-proliferation issues

On 27 April 2012, the First Preparatory Meeting for the Third Conference of States Parties and Signatories that establish Nuclear-Weapon-Free Zones and Mongolia was held in Vienna. The Preparatory Meeting established that the Third Conference would take place in Vienna in 2015.

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[178] General Assembly resolutions 67/68 entitled "United Nations disarmament fellowship, training and advisory services"; 67/71 entitled "Report of the Disarmament Commission"; 67/72 entitled "Report of the Conference on Disarmament"; and decisions 67/518 entitled "Open-ended Working Group on the Fourth Special Session of the General Assembly Devoted to Disarmament" and 67/519 entitled "Revitalizing the work of the Conference on Disarmament and taking forward multilateral disarmament negotiations".

[179] For further details on Security Council resolutions, see section 2 of the present chapter.

The Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 1968[180] (NPT), held its first session from 30 April to 11 May 2012 in Vienna, with the participation of 111 States parties to the NPT. This meeting was the first of three sessions that will be held prior to the 2015 Review Conference. The Preparatory Committee held 15 meetings at which it addressed substantive and procedural issues related to the NPT and the upcoming Review Conference in 2015.[181] In particular, the Committee considered the principles, objectives and ways to promote the full implementation of the NPT, as well as its universality, including specific matters of substance related to its implementation.

The International Atomic Energy Agency (IAEA) held its 56th General Conference of member States from 17 to 21 September 2012 in Vienna. The Conference adopted 16 resolutions and two decisions[182] relating to the work of IAEA in key areas, including on measures to strengthen the Agency's activities related to nuclear science, technology and applications; international cooperation in nuclear, radiation, transport and waste safety; nuclear security; and the application of IAEA safeguards in the Middle East.

On 27 September 2012, the Sixth Ministerial Meeting of the Comprehensive Nuclear-Test-Ban Treaty, 1996[183] (CTBT) took place. Foreign ministers and other high-level representatives met at the United Nations Headquarters in New York to issue a joint call for the entry into force of the CTBT. In their joint ministerial statement, the foreign ministers called upon all States that had not done so to sign and ratify the Treaty.[184]

[180] United Nations, *Treaty Series*, vol. 729, p 161.

[181] Report of the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons on its first session (NPT/CONF.2015/PC.I/14).

[182] General Conference resolutions GC(56)/RES/1–16 and decisions GC(56)/DEC/9 and 10.

[183] A/50/1027.

[184] A/67/515, annex.

(i) *General Assembly*

On 3 December 2012, the General Assembly adopted, upon the recommendation of the First Committee, 20 resolutions and one decision concerning nuclear weapons and non-proliferation issues,[185] six of which are described below.

In resolution 67/39 entitled "High-level meeting of the General Assembly on nuclear disarmament, adopted by a recorded vote of 179 in favour to none against, with 4 abstentions, the General Assembly, *inter alia*, emphasized the importance of seeking a safer world for all and achieving peace and security in a world without nuclear weapons. In this context, it decided to convene a high-level meeting of the General Assembly on nuclear disarmament that would be held as a one-day plenary meeting on 26 September 2013, to contribute to achieving the goal of nuclear disarmament.

By resolution 67/42 entitled "The Hague Code of Conduct against Ballistic Missile Proliferation", adopted, by a recorded vote of 162 in favour to 1 against, with 20 abstentions, the General Assembly recognized that 2012 marked a decade since the creation of the Code of Conduct[186] and welcomed the advancement of the universalization process of the Code of Conduct.

In resolution 67/53 entitled "Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices", adopted by a recorded vote of 166 in favour to 1, with 21 abstentions, the General Assembly, *inter alia*, urged the Conference on Disarmament to include in its programme of work the immediate commencement of negotiations on a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices on the basis of document CD/1299 and the mandate contained therein. It requested the Secretary-General to seek the views of Member States on such a treaty and to submit a report on the subject to the Assembly at its sixty-eighth session. The Assembly also requested the Secretary-General to establish a group of governmental experts with a membership of twenty-five States chosen on the basis of equitable geographical representation, which, taking into account the report containing the views of

[185] General Assembly resolutions 67/26 entitled "African Nuclear-Weapon-Free Zone Treaty"; 67/28 entitled "Establishment of a nuclear-weapon-free zone in the region of the Middle East"; 67/29 entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons"; 67/31 entitled "Treaty on a Nuclear-Weapon-Free Zone in Central Asia"; 67/33 entitled "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons"; 67/34 entitled "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments"; 67/39 entitled "High-level meeting of the General Assembly on nuclear disarmament"; 67/42 entitled "The Hague Code of Conduct against Ballistic Missile Proliferation"; 67/45 entitled "Reducing nuclear danger"; 67/46 entitled "Decreasing the operational readiness of nuclear weapons systems"; 67/51 entitled "Preventing the acquisition by terrorists of radioactive sources"; 67/52 entitled "Mongolia's international security and nuclear-weapon-free status"; 67/53 entitled "Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices"; 67/55 entitled "Nuclear-weapon-free southern hemisphere and adjacent areas"; 67/56 entitled "Taking forward multilateral nuclear disarmament negotiations"; 67/59 entitled "United action towards the total elimination of nuclear weapons"; 67/60 entitled "Nuclear disarmament"; 67/64 entitled "Convention on the prohibition of the Use of Nuclear Weapons"; 67/73 entitled "The risk of nuclear proliferation in the Middle East"; 67/76 entitled "Comprehensive Nuclear-Test-Ban Treaty"; and decision 67/516 entitled "Missiles". See also General Assembly resolution 67/3 entitled "Report of the International Atomic Energy Agency", adopted on 5 November 2012.

[186] A/57/724, enclosure.

Member States, would make recommendations on possible aspects that could contribute to but not negotiate a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices, which would operate on the basis of consensus, without prejudice to national positions in future negotiations and which would meet in Geneva for two sessions of two weeks in 2014 and in 2015. The Assembly called upon the Secretary-General to transmit the report of the group of governmental experts to the General Assembly at its seventieth session and to the Conference on Disarmament.

In resolution 67/59 entitled "United action towards the total elimination of nuclear weapons", adopted by 174 votes in favour to 1 against, with 13 abstentions, the General Assembly, *inter alia*, reaffirmed the importance of all States parties to the Treaty complying with their obligations under all the articles of the Treaty. It also reaffirmed the vital importance of the universality of the Treaty and called upon all States not parties to the Treaty to accede as non-nuclear-weapon States to the Treaty promptly and without any conditions and, pending their accession, to adhere to its terms and take practical steps in support of the Treaty.

In resolution 67/64 entitled "Convention on the prohibition of the Use of Nuclear Weapons", adopted by a recorded vote of 129 in favour to 49 against, with 10 abstentions, the General Assembly, *inter alia*, reiterated its request to the Conference on Disarmament to commence negotiations in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances.

In resolution 67/76 entitled "Comprehensive Nuclear-Test-Ban Treaty", adopted by a recorded vote of 184 in favour to 1 against, with 3 abstentions, the General Assembly, *inter alia*, welcomed the Joint Ministerial Statement on the Comprehensive Nuclear-Test-Ban Treaty of 27 September 2012.[187] It stressed the vital importance and urgency of signature and ratification, without delay and without conditions, in order to achieve the earliest entry into force of the Comprehensive Nuclear-Test-Ban Treaty, 1996. The Assembly further urged all States not to carry out nuclear-weapon test explosions or any other nuclear explosions, to maintain their moratoriums in this regard and to refrain from acts that would defeat the object and purpose of the Treaty, while stressing that these measures do not have the same permanent and legally binding effect as the entry into force of the Treaty.

(ii) *Security Council*[188]

By resolution 2049 (2012) of 7 June 2012, the Security Council, acting under Article 41 of Chapter VII of the Charter of the United Nations, decided, *inter alia*, to extend until 9 July 2013 the mandate of the Panel of Experts, which had been created by the Secretary-General pursuant to paragraph 29 resolution 1929 (2010), to assist in the monitoring of the relevant sanctions measures imposed on the Islamic Republic of Iran.

By resolution 2050 (2012) of 12 June 2012, the Security Council, also acting under Article 41 of Chapter VII of the Charter of the United Nations, decided, *inter alia*, to extend until 12 July 2013 the mandate of the Panel of Experts, which had been created by the Secretary-General pursuant to paragraph 26 of resolution 1874 (2009) to assist in

[187] A/67/515, annex.

[188] For further details on Security Council resolutions, see section 2 of the present chapter.

the monitoring of the relevant sanctions measures imposed on the Democratic People's Republic of Korea.

(*c*) Biological and chemical weapons issues

In accordance with the final document of the Seventh 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,[189] (Biological Weapons Convention[190]), the Meeting of Experts and the Meeting of States Parties were held in Geneva from 16 to 20 July 2012 and from 10 to 14 December 2012, respectively. The Seventh Review Conference had decided that the following topics should be standing agenda items, which would be addressed by both the Meeting of Experts and the Meeting of States Parties every year from 2012 to 2015: (*a*) Cooperation and assistance, with a particular focus on strengthening cooperation and assistance under article X; (*b*) Review of developments in the field of science and technology related to the Convention; and (*c*) Strengthening national implementation. The Conference had also decided that the item "How to enable fuller participation in the confidence-building measures" would be considered in 2012 and 2013.[191]

Pursuant to the decision of the Seventh Review Conference, the Meeting of Experts held two sessions devoted to each of the standing agenda items and two sessions devoted to the biennial item on how to enable fuller participation in the confidence-building measures. At its closing meeting on 20 July 2012, the Meeting of Experts adopted its report by consensus.[192]

Also pursuant to the decision of the Seventh Review Conference, the Meeting of States Parties considered the work of the Meeting of Experts on the three standing agenda items, the biennial item of how to enable fuller participation in the confidence-building measures, the annual item on progress with universalization of the Convention,[193] and the annual report of the Implementation Support Unit.[194] At its closing meeting on 14 December 2012, the Meeting of States Parties considered arrangements for the Meeting of Experts and the Meeting of States Parties in 2013 and adopted its report by consensus.[195]

With regard to chemical weapons, the seventeenth session of the Conference of the States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992 (Chemical Weapons Convention[196]) was held in The Hague, from 26 to 29 November 2012. The issues considered included, *inter alia*, the status of implementation of the Chemical Weapons Convention, fostering of international cooperation for peaceful purposes in the field of

[189] BWC/CONF.VII/7.

[190] United Nations, *Treaty Series,* vol. 1015, p. 163.

[191] BWC/CONF.VII/7, chapter III.

[192] BWC/MSP/2012/MX/3 and Corr.1.

[193] BWC/MSP/2012/3 and Add.1

[194] BWC/MSP/2012/2 and Add.1.

[195] BWC/MSP/2012/5.

[196] United Nations, *Treaty Series*, vol. 1974, p. 45.

chemical activities, and ensuring the universality of the Convention. On 29 November, the Conference considered and adopted the report of its seventeenth session.[197]

General Assembly

On 3 December 2012, the General Assembly adopted, three resolutions relating to biological and chemical weapons, upon the recommendation of the First Committee, which are described below.

By resolution 67/35 entitled "Measures to uphold the authority of the 1925 Geneva Protocol", adopted by a recorded vote of 181 in favour to none, with 4 abstentions, the General Assembly renewed its previous call[198] to all States to observe strictly the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925,[199] (1925 Geneva Protocol) and called upon those States that continued to maintain reservations to the 1925 Geneva Protocol to withdraw them.

By resolution 67/54 entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction", adopted without a vote, the General Assembly, *inter alia*, emphasized that the universality of the Chemical Weapons Convention was fundamental to the achievement of its objective and purpose, and called upon all States that had not yet done so to become parties to the Convention without delay. The Assembly stressed that the full and effective implementation of all provisions of the Chemical Weapons Convention constituted an important contribution to the efforts of the United Nations in the global fight against terrorism in all its forms and manifestations. Furthermore, all States parties were urged to meet in full and on time their obligations under the Convention and to support the Organization for the Prohibition of Chemical Weapons in its implementation activities.

The General Assembly also adopted resolution 67/77 entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction", without a vote, in which it noted with satisfaction the successful outcome of and the decisions on all provisions of the Convention reached at the Seventh Review Conference of the States Parties to the Convention, and called upon States parties to the Convention to participate and actively engage in their implementation. Furthermore, the Assembly noted with appreciation the work of the Implementation Support Unit and welcomed the decision of the Seventh Review Conference to renew its mandate and request the Unit to perform, in addition to the tasks mandated by the Sixth Review Conference, two tasks for the period from 2012 to 2016, in order to support, as appropriate, the implementation by the States parties of the decisions and recommendations of the Seventh Review Conference.

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[197] C-17/5.

[198] General Assembly resolution 65/51 of 8 December 2010.

[199] League of Nations, *Treaty Series*, vol. XCIV, p. 65.

(*d*) Conventional weapons issues

In accordance with General Assembly resolution 64/48 of 23 December 2009 and Assembly decision 66/518, the Preparatory Committee of the United Nations Conference on the Arms Trade Treaty held its fourth session at the United Nations Headquarters in New York from 13 to 17 February 2012, to conclude its substantive work and consider all relevant procedural matters. On 17 February, the Preparatory Committee adopted its report, which included the Committee's decisions and recommendations concerning the Conference.[200]

The United Nations Conference on an Arms Trade Treaty was held from 2 to 27 July 2012 at the United Nations Headquarters in New York. On 9 July, the Conference approved its provisional programme of work for two weeks, from 9 to 20 July, by which it established two main committees to conduct negotiations on the elements of the treaty. The Conference also held informal meetings from 6 to 27 July 2012. At its 15th meeting, on 26 July, the President submitted, under his own responsibility and without prejudice to the position of any delegation, the text of a draft arms trade treaty.[201] On 27 July, the Conference adopted its report by consensus.[202]

In accordance with resolution 66/47 of 2 December 2011, the Preparatory Committee for the Second Conference to Review Progress Made in 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 (Programme of Action)[203] was convened from 19 to 23 March 2012. On 23 March, the Preparatory Committee adopted its report, which contained, *inter alia*, a number of decisions and recommendations concerning the Conference, including on background documentation, the provisional agenda and provisional rules of procedure.[204] Also pursuant to resolution 66/47, the Second Conference to Review Progress Made in the Implementation of the Programme of Action was held in New York from 27 August to 7 September 2012. On 7 September, the Conference adopted two outcome documents relating to the Programme of Action and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.[205]

Concerning cluster munitions, the Third Meeting of States Parties to the Convention on Cluster Munitions, 2008,[206] was held from 11 to 14 September 2012 in Oslo. The Meeting of States Parties considered, *inter alia*, issues relating to the clearance and destruction of cluster munitions remnants and risk reduction activities; stockpile reduction; victim assistance; international cooperation and assistance; transparency measures; national

[200] A/CONF.217/1.

[201] A/CONF.217/CRP.1.

[202] A/CONF.217/4.

[203] For more information about the Programme of Action, see the report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9–20 July 2001 (A/CONF.192/15), chapter IV, para. 24.

[204] A/CONF.192/2012/RC/1, chapters V and VI.

[205] A/CONF.192/2012/RC/4, annexes I and II.

[206] United Nations, *Treaty Series*, registration No. 47713 (no volume number had been determined for this Convention at the time of this publication).

implementation measures and the universalization of the treaty. At the last plenary meeting, on 14 September 2012, the Meeting of States Parties decided to mandate its President to further negotiate, in consultation with the States parties, an agreement on the hosting of an implementation support unit, as well as its establishment and a funding model, and present these proposals to States parties for approval. In this context, it welcomed that the United Nations Development Programme Bureau for Crisis Prevention and Recovery would continue to provide the function as interim implementation support unit. The Meeting of States Parties further decided to convene an informal intersessional meeting in Geneva from 16 to 19 April 2013. At the same plenary meeting, the Meeting of States Parties adopted its final document.[207]

The Meeting of the High Contracting 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, 1980[208] (Convention on Conventional Weapons) was held in Geneva on 15 and 16 November 2012. The Meeting considered, *inter alia*, the report of the open-ended meeting of experts that was convened in Geneva from 2 to 4 April 2012 to discuss further the implementation of international humanitarian law with regard to mines other than anti-personnel mines.[209] The Meeting also welcomed the report on promoting universality of the Convention and its Protocols,[210] the report of the Sponsorship Programme,[211] and reaffirmed its commitment to the Accelerated Plan of Action on Universalization.[212] The Meeting further emphasized the importance of achieving universal adherence to, and compliance with, the Convention, the amendment to its article 1, and its protocols. On 16 November, the Meeting adopted its final report.[213]

With regard to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996 (Amended Protocol II)[214] annexed to the Convention on Conventional Weapons, the Fourteenth Annual Conference was held on 14 November 2012 in Geneva. The Conference held two plenary meetings[215] and considered the work of the Group of Experts of the High Contracting Parties to Amended Protocol II who met in Geneva on 23 and 24 April 2012 to, *inter alia*, review the operation and status of the Protocol, consider matters arising from reports by High Contracting Parties according to article 13, paragraph 4, of Amended Protocol II, as well as the development of technologies to protect civilians against indiscriminate effects of mines. The Conference, *inter alia*, took note of the reports on the operation and status of the Protocol and on improvised explosive devices. At its second plenary meeting, the Conference decided to issue an appeal to call upon all States that had not yet done so to take all measures to accede to Amended Protocol II as soon as possible.[216]

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[207] CCM/MSP/2012/5.

[208] United Nations, *Treaty Series,* vol. 1342, p. 137.

[209] CCW/MSP/2012/4.

[210] CCW/MSP/2012/6.

[211] CCW/MSP/2012/7 and Add.1.

[212] See document CCW/CONF.IV/4/Add.1.

[213] CCW/MSP/2012/9.

[214] United Nations, *Treaty Series*, vol. 2048, p. 93.

[215] For the report, see CCW/AP.II/CONF.14/6.

[216] *Ibid*., annex I.

The 2012 Meeting of Experts relating to the Protocol on Explosive Remnants of War ["ERW"] (Protocol V)[217] was held from 25 to 27 April 2012, in Geneva. The main focus of the Meeting of Experts was on the following issues: national reporting, clearance, removal or destruction of ERW; victim assistance; cooperation and assistance; and generic preventive measures. The Sixth Conference of the High Contracting Parties of the Protocol was held in Geneva on 12 and 13 November 2012, to consider, *inter alia*, the work of the Meeting of Experts. At its fourth plenary meeting, the Conference adopted its final document.[218]

The Twelfth 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 Destruction, 1997 (Mine-Ban Convention)[219] was held in Geneva from 3 to 7 December 2012. The Meeting considered the Geneva Progress Report on achieving the aims of the Cartagena Action Plan[220] and the reports presented by the President of the Eleventh Meeting of the States Parties concerning issues pertaining to extensions to article 5 deadlines.[221] It also evaluated the activities of the implementation support unit[222] and considered the general status and operation of the Mine-Ban Convention. At its final plenary session, on 7 December 2012, the Meeting adopted its report.[223]

General Assembly

On 3 December 2012, the General Assembly adopted, on the recommendation of the First Committee, five resolutions and one decision dealing with conventional arms issues,[224] two of which are highlighted below.

By resolution 67/58 entitled "The illicit trade in small arms and light weapons in all its aspects", adopted without a vote, the General Assembly, *inter alia*, took note of the report of the Secretary-General[225] on this item and endorsed the outcome of the Second United Nations Conference to Review Progress Made in 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.[226] It decided to convene a one-week biennial meeting of

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[217] United Nations, *Treaty Series*, vol. 2399, p. 100.

[218] CCW/P.V/CONF/2012/10.

[219] United Nations, *Treaty Series*, vol. 2056, p. 211.

[220] APLC/MSP.12/2012/WP.3, 4, 8 and 10.

[221] APLC/MSP.12/2012/4 and APLC/MSP.12/2012/6.

[222] APLC/MSP.12.2012/8 and Corr.1.

[223] APLC/MSP.12/2012/10.

[224] General Assembly resolutions 67/32 entitled "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction"; 67/41 entitled "Assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them"; 67/49 entitled "Information on confidence-building measures in the field of conventional arms"; 67/58 entitled "The illicit trade in small arms and light weapons in all its aspects"; 67/74 entitled "Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects"; and decision 67/517 entitled "Transparency in armaments".

[225] A/67/176.

[226] A/CONF.192/2012/RC/4, annexes I and II.

States, in New York in 2014 and 2016, and a one-week open-ended meeting of governmental experts in 2015, to consider the full and effective implementation of the Programme of Action. The Assembly also decided, in accordance with the decision of the Second Review Conference, to hold the Third United Nations Conference to Review Progress Made in the Implementation of the Programme of Action in 2018 for a period of two weeks, preceded by a one-week preparatory committee meeting early in 2018.

In resolution 67/74 entitled "Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects", adopted without a vote, the Assembly called upon all States that had not yet done so to take all measures to become parties, as soon as possible, to the Convention, 1980,[227] and the Protocols thereto.[228] The Assembly further called upon all States parties to the Convention that had not yet done so to express their consent to be bound by the Protocols to the Convention and the Amendment[229] extending the scope of the Convention and the Protocols thereto to include armed conflicts of a non-international character. The Assembly noted that the implementation of international humanitarian law with regard to mines other than anti-personnel mines was discussed further at an open-ended Meeting of Experts in April 2012, on the basis of a decision by the Fourth Review Conference of the High Contracting Parties to the Convention. It welcomed the commitment by States parties to continue to contribute to the further development of international humanitarian law and in this context to keep under review both the development of new weapons and uses of weapons, which may have indiscriminate effects or cause unnecessary suffering.

On 24 December 2012, also on the recommendation of the First Committee, the Assembly adopted, with a recorded vote of 133 in favour to none, with 17 abstentions, resolution 67/ 234 entitled "The arms trade treaty". By resolution 67/234, the Assembly expressed disappointment that the Conference was unable to conclude its work to elaborate a legally binding instrument on the highest possible common international standards for the international transfer of conventional arms. It noted the report of the United Nations Conference on the Arms Trade Treaty[230] and decided to convene in New York, from 18 to 28 March 2013, the Final United Nations Conference on the Arms Trade Treaty in order to finalize the elaboration of the arms trade treaty, in an open and transparent manner, utilizing the modalities, applied *mutatis mutandis*, under which the United Nations Conference on the Arms Trade Treaty operated. It also decided that the draft text of the arms trade treaty submitted by the President of the Conference on 26 July 2012[231] should be the basis for future work on the treaty, without prejudice to the right of delegations to put forward additional proposals on that text.

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[227] United Nations, *Treaty Series*, vol. 1342, p. 137.

[228] *Ibid*., vol. 2024, p. 163, vol. 2048, p. 93, vol. 2399, p. 100.

[229] *Ibid*., vol. 2260, p. 82.

[230] A/CONF.217/4.

[231] A/CONF.217/CRP.1.

(*e*) Regional disarmament activities of the United Nations

(i) *Africa*

In 2012, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) continued to implement its mandate through various activities in support of disarmament initiatives in the African region. Its programmes included: regulating small arms brokering in East Africa; developing a regional legal instrument to curb the proliferation of small arms and light weapons in Central Africa; the harmonization of legislation on small arms; and the African Security Sector Reform Programme.

In partnership with the African Union and the International Action Network on Small Arms (IANSA), UNREC co-organized a two-day consultation in Addis Ababa, from 21 to 22 May 2012, for all African States to further discuss the Arms Trade Treaty in advance of the July negotiations in New York.[232]

The United Nations Regional Office for Central Africa (UNOCA), as a new secretariat of the United Nations Standing Advisory Committee for Security Questions in Central Africa (UNSAC), organized the thirty-fourth and thirty fifth ministerial meetings of UNSAC.[233] During the thirty-fourth ministerial meeting, which was held from 14 to 18 May 2012 in Bujumbura, the participants, *inter alia*, reviewed the implementation of General Assembly resolution 65/69 on women, disarmament, non-proliferation and arms control.[234] During the thirty-fifth ministerial meeting, held in Brazzaville from 3 to 7 December 2012, the participants discussed, *inter alia*, the status of ratification of the Central African Convention for the Control of Small Arms and Light Weapons (Kinshasa Convention)[235] and other issues relating to peace and security.[236]

(ii) *Asia and the Pacific*

In 2012, the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD) focused its activities on promoting the implementation of global disarmament and non-proliferation instruments; enhancing regional dialogue and confidence-building in the areas of disarmament, non-proliferation and regional security; and outreach and advocacy.[237]

The Regional Centre contributed substantively to a regional meeting of the United Nations Office for Disarmament Affairs on the implementation of the Programme of

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[232] For more information see, report of the Secretary-General: United Nations Regional Centre for Peace and Disarmament in Africa (A/67/117).

[233] For more information see, report of the Secretary-General entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa" (A/67/359).

[234] See report of the United Nations Standing Advisory Committee on Security Questions in Central Africa, (A/67/309–S/2012/630, annex).

[235] See chapter XXVI.7 of *Multilateral Treaties Deposited with the Secretary-General,* available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

[236] At the time of publication, the report from this meeting was forthcoming.

[237] For more information, see report of the Secretary-General on the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific (A/67/112).

Action in Asian countries, held in Bali, Indonesia, on 5 and 6 March 2012 and coordinated several workshops and other seminars across the continent.

On 3 and 4 December 2012, the Centre held the Eleventh Annual United Nations-Republic of Korea Joint Conference on Disarmament and Non-proliferation Issues, hosted by the Republic of Korea, to address the theme "Disarmament and Non-proliferation in Asia and Beyond: Conventional weapons and missiles".[238]

(iii) *Latin America and the Caribbean*

In 2012, the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) focused its activities on supporting States in combating the illicit trafficking in small arms and light weapons, ammunition and explosives, which pose serious threats to public security in the region. UN-LiREC provided, upon request, capacity-building assistance, training, legal support, technical assistance and outreach and advocacy functions to ensure the national implementation of global and regional instruments in the areas of disarmament, arms control and non-proliferation.

In addition, the Centre contributed to strengthening transparency and confidence-building by promoting the participation of States of the region in relevant United Nations instruments, such as the United Nations Register on Conventional Arms and the United Nations Report on Military Expenditures. The Regional Centre also promoted the implementation of various disarmament and non-proliferation instruments related to weapons of mass destruction, including Security Council resolution 1540 (2004).[239]

(iv) *General Assembly*

On 3 December 2012, the General Assembly adopted, on the recommendation of the First Committee, nine resolutions and one decision dealing with regional disarmament,[240] three of which are highlighted below.

In resolution 67/62 entitled "Conventional arms control at the regional and subregional levels", adopted by a recorded vote of 185 votes in favour to 1 against, with 2 absten-

[238] For more information, see http://www.unrcpd.org.np/activities/conferences/ (accessed on 31 December 2012).

[239] For more information, see report of the Secretary-General on the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (A/67/132).

[240] General Assembly resolutions 67/57 entitled "Regional disarmament"; 67/61 entitled "Confidence-building measures in the regional and subregional context"; 67/62 entitled "Conventional arms control at the regional and subregional levels"; 67/63 entitled "United Nations regional centres for peace and disarmament"; 67/65 entitled "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific"; 67/66 entitled "United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean"; 67/69 entitled "United Nations Regional Centre for Peace and Disarmament in Africa"; 67/70 entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa"; 67/75 entitled "Strengthening of security and cooperation in the Mediterranean region"; and decision 67/514 entitled "Maintenance of international security—good-neighbourliness, stability and development in South-Eastern Europe".

tions, the General Assembly decided to give urgent consideration to the issues involved in conventional arms control at the regional and subregional levels, and requested the Conference on Disarmament to consider the formulation of principles that could serve as a framework for regional agreements on conventional arms control.

In resolution 67/69 entitled "United Nations Regional Centre for Peace and Disarmament in Africa", adopted without a vote, the Assembly, *inter alia*, welcomed the contribution of UNREC to continental disarmament, peace and security, in particular its assistance to the African Union Commission in the elaboration of the African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons and the ongoing process of seeking an African common position on the proposed arms trade treaty, and to the African Commission on Nuclear Energy in its implementation of the African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba).[241] The Assembly further noted with appreciation the tangible achievements of UNREC at the regional level, including its assistance to Central African States in their elaboration of the Kinshasa Convention, to Central and West African States in the elaboration of their respective common positions on an arms trade treaty, to West Africa on security sector reform initiatives, and to East Africa on programmes to control brokering of small arms and light weapons.

By resolution 67/75 entitled "Strengthening of security and cooperation in the Mediterranean region", adopted without a vote, the General Assembly, *inter alia*, expressed concern at the persistent tension and continuing military activities in parts of the Mediterranean that hindered efforts to strengthen security and cooperation in the region and called upon all States of the Mediterranean region that had not yet done so to adhere to all the multilaterally negotiated legal instruments related to the field of disarmament and non-proliferation.

(*f*) Outer space (disarmament aspects)

The Group of Governmental Experts on Transparency and Confidence-building Measures in Outer Space Activities, established pursuant to General Assembly resolution 65/68, held its first session in New York from 23 to 27 July 2012. The Group of Governmental Experts reviewed the proposals submitted by Governments in recent years for possible transparency and confidence-building measures in outer space, broadly covering measures related to rules of conduct, measures aimed at expanding the transparency of outer space activities, measures aimed at expanding transparency of space programmes, and mechanisms aimed at resolving concerns.[242]

On 5 June and 31 July 2012, the Conference on Disarmament held two plenary meetings on the item entitled "Prevention of an arms race in outer space".[243] The participants considered, *inter alia*, the work of the Group of Governmental Experts,[244] a working paper entitled "Syrian Arab Republic on behalf of member States of G-21. Working paper. Pre-

[241] See A/50/426, annex.

[242] Note on the first session of the Group of Governmental Experts on Transparency and Confidence-Building Measures in Outer Space Activities, document A/CONF.220/1.

[243] CD/PV.1260 and CD/PV.1265.

[244] A/CONF.220/1.

vention of an arms race in outer space",[245] the 2008 draft treaty proposed by Russia and China on Prevention of the Placement of Weapons in Outer Space and the Threat or Use of Force against Outer Space Objects,[246] and the draft International Code of Conduct for Outer Space Activities introduced by the European Union.[247]

General Assembly

On 3 December 2012, the General Assembly adopted resolution 67/30 entitled "Prevention of an arms race in outer space", on the recommendation of the First Committee, by a recorded vote of 183 in favour to none, with 2 abstentions. In resolution 67/30, the Assembly reaffirmed, *inter alia*, the importance and urgency of preventing an arms race in outer space and the readiness of all States to contribute to that common objective, in conformity with the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1966.[248] The Assembly further reaffirmed its recognition, as stated in the report of the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space, that the legal regime applicable to outer space by itself did not guarantee the prevention of an arms race in outer space, that the regime played a significant role in the prevention of an arms race in that environment, that there was a need to consolidate and reinforce that regime and enhance its effectiveness and that it was important to comply strictly with existing agreements, both bilateral and multilateral. It invited the Conference on Disarmament to establish a working group under the agenda item "Prevention of an arms race in outer space" as early as possible during its 2013 session.

On 18 December 2012, the General Assembly adopted resolution 67/113 entitled "International cooperation in the peaceful uses of outer space", without a vote, on the recommendation of the Fourth Committee, in which the Assembly, *inter alia*, urged all States, in particular those with major space capabilities, to contribute actively to the goal of preventing an arms race in outer space as an essential condition for the promotion of international cooperation in the exploration and use of outer space for peaceful purposes.

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[245] CD/1941 and Corr.1.

[246] CD/1839.

[247] European Union, revised draft International Code of conduct for Outer Space Activities, 5 June 2012. Available from: http://www.consilium.europa.eu/media/ (accessed on 31 December 2012).

[248] United Nations, *Treaty Series*, vol. 610, p. 205.

(*g*) Other disarmament measures and international security

General Assembly

On 3 December 2012, the General Assembly adopted, upon the recommendation of the First Committee, 11 resolutions and one decision concerning other disarmament measures and international security,[249] three of which are described below.

By resolution 67/27 entitled "Developments in the field of information and telecommunications in the context of international security", adopted without a vote, the General Assembly called upon Member States to promote further at multilateral levels the consideration of existing and potential threats in the field of information security, as well as possible strategies to address the threats emerging in this field, consistent with the need to preserve the free flow of information. The Assembly welcomed the effective work of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security and the relevant report transmitted by the Secretary-General on the matter[250] and authorized the Group to continue its study.

In its resolution 67/37 entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control" adopted without a vote, the Assembly, mindful of the detrimental environmental effects of the use of nuclear weapons, reaffirmed, *inter alia*, that international disarmament forums should take fully into account the relevant environmental norms in negotiating treaties and agreements on disarmament and arms limitation. It further called upon States to adopt unilateral, bilateral, regional and multilateral measures so as to contribute to ensuring the application of scientific and technological progress within the framework of international security, disarmament and other related spheres, without detriment to the environment or to its effective contribution to attaining sustainable development. The Assembly also took note of the report of the Secretary-General on the subject.[251]

By resolution 67/38 entitled "Promotion of multilateralism in the area of disarmament and non-proliferation", adopted by a recorded vote of 132 in favour to 5 against, with 50 abstentions, the Assembly reaffirmed, *inter alia*, that multilateralism was the core principle in negotiations in the area of disarmament and non-proliferation, as well as in resolving disarmament and non-proliferation concerns. It urged the participation of all interested

[249] General Assembly resolutions 67/27 entitled "Developments in the field of information and telecommunications in the context of international security"; 67/36 entitled "Effects of the use of armaments and ammunitions containing depleted uranium"; 67/37 entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control"; 67/38 entitled "Promotion of multilateralism in the area of disarmament and non-proliferation"; 67/40 entitled "Relationship between disarmament and development"; 67/43 entitled "Preventing and combating illicit brokering activities"; 67/44 entitled "Measure to prevent terrorists from acquiring weapons of mass destruction"; 67/47 entitled "United Nations study on disarmament and non-proliferation education"; 67/48 entitled "Women, disarmament, non-proliferation and arms control"; 67/50 entitled "Consolidation of peace through practical disarmament measures"; 67/67 entitled "United Nations Disarmament Information Programme"; and decision 67/515 entitled "Role of science and technology in the context of international security and disarmament"

[250] A/65/201.

[251] A/67/130 and Add.1.

States in multilateral negotiations on arms regulation, non-proliferation and disarmament in a non-discriminatory and transparent manner.

4. Legal aspects of peaceful uses of outer space

(*a*) Legal Subcommittee on the Peaceful Uses of Outer Space

The Legal Subcommittee on the Peaceful Uses of Outer Space held its fifty-first session at the United Nations Office in Vienna from 19 to 30 March 2012.[252]

Under the agenda item "Status and application of the five United Nations treaties on outer space", the Subcommittee, *inter alia,* reconvened its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space[253] and provided a revised status of the five United Nations treaties on outer space.[254] The Legal Subcommittee endorsed the recommendation that the mandate of the Working Group be extended for one additional year. It was agreed that the Subcommittee, at its fifty-second session, in 2013, would review the need to extend the mandate of the Working Group beyond that period.

Regarding matters related to the definition and delimitation of outer space and the character and utilization of geostationary orbit, the Subcommittee reconvened its Working Group on the Definition and Delimitation of Outer Space. The Working Group provided a report on its meetings,[255] which was endorsed by the Subcommittee. The Subcommittee agreed to reconvene the Working Group on Matters Relating to the Definition and Delimitation of Outer Space at its fifty-second session.

With regard to the agenda item entitled "Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space",[256] the Subcommittee, *inter alia*, noted with satisfaction that the adoption of the Safety Framework for Nuclear Power Source Applications in Outer Space[257] by the Scientific and Technical Subcommittee at its forty-sixth session and the endorsement of the Safety Framework by the Committee on the Peaceful Uses of Outer Space at its fifty-second session, in 2009, constituted an important step in the efforts of progressive development of international space law and significantly advanced international cooperation in ensuring the safe use of nuclear power sources in outer space.

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[252] For the report of the Legal Subcommittee, see A/AC.105/1003.

[253] See report of the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space (A/AC.105/1003, annex I).

[254] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, United Nations, *Treaty Series*, vol. 610, p. 205; Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, *Ibid*., vol. 672, p. 119; Convention on International Liability for Damage Caused by Space Objects, *Ibid*., vol. 961, p. 187; Convention on Registration of Objects Launched into Outer Space *Ibid*., vol. 1023, p. 15; and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, *Ibid*., vol. 1363, p. 3.

[255] A/AC.105/1003, annex II.

[256] General Assembly resolution 47/68 of 14 December 1992.

[257] A/AC.105/934.

Concerning the agenda item entitled "Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment",[258] the Subcommittee was informed by the observer for the International Institute for the Unification of Private Law (UNIDROIT) that the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, held in Berlin from 27 February to 9 March 2012, had adopted and opened for signature on 9 March the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets.

Under the agenda item entitled "Capacity-building in space law", the Subcommittee agreed that capacity-building, training and education in space law were of paramount importance to national, regional and international efforts to further develop the practical aspects of space science and technology and to increase knowledge of the legal framework within which space activities were carried out. It was emphasized that the Subcommittee had an important role to play in that regard. The Subcommittee also noted with appreciation that a number of national, regional and international efforts to build capacity in space law were being undertaken by governmental and non-governmental entities.

Under the agenda item "General exchange of information on national mechanisms relating to space debris mitigation measures", the Subcommittee, *inter alia,* noted with satisfaction that some States were implementing space debris mitigation measures consistent with the Space Debris Mitigation Guidelines of the Committee (2007) and/or with the Inter-Agency Space Debris Coordination Committee (IADC) Space Debris Mitigation Guidelines and that other States had developed their own space debris mitigation standards based on those guidelines. The Subcommittee also noted that some States were using the IADC Space Debris Mitigation Guidelines, the European Code of Conduct for Space Debris Mitigation and International Organization for Standardization (ISO) standard 24113 (Space systems: space debris mitigation requirements) as references in their regulatory frameworks established for national space activities. It also urged States and organizations to continue to implement the Space Debris Mitigation Guidelines of the Committee and to study the experience of States that had already established national mechanisms governing space debris mitigation.

Regarding the agenda item entitled "General exchange of information on national legislation relevant to the peaceful exploration and use of outer space", the Subcommittee reconvened its Working Group on National Legislation Relevant to the Peaceful Exploration and Use of Outer Space. The Subcommittee endorsed the final report of the Working Group on the work conducted under its multi-year workplan, containing a set of conclusions relating to national regulatory frameworks for space activities,[259] as well as the report of the Chair of the Working Group, containing, in an appendix, a text prepared on the basis of those conclusions, entitled "Recommendations on national legislation relevant to the peaceful exploration and use of outer space."[260] The Subcommittee further recommended that the Committee on the Peaceful Uses of Outer Space consider the said appen-

[258] United Nations, *Treaty Series*, vol. 2307, p. 285.

[259] A/AC.105/C.2/101.

[260] A/AC.105/1003, annex III.

dix at its fifty-fifth session and that it decide in which form the text should be submitted to the General Assembly, as recommended by the Working Group.

Concerning future work, the Subcommittee agreed to include "National legislation relevant to the peaceful exploration and use of outer space" as a new regular item on its agenda and "Review of the international mechanisms for cooperation in the peaceful exploration and use of outer space" as an item under a five-year workplan. It was agreed that a working group should be established to consider the latter item from 2014 to 2017.

The Committee on the Peaceful Uses of Outer Space held its fifty-fifth session in Vienna from 6 to 15 June 2012. The Committee took note of the Legal Subcommittee's report and endorsed its recommendations contained therein.[261]

(*b*) General Assembly

On 18 December 2012, the General Assembly adopted, on the recommendation of the Fourth Committee, resolution 67/113 entitled "International cooperation in the peaceful uses of outer space", without a vote, in which it endorsed the report of the Committee on the Peaceful Uses of Outer Space. It, *inter alia,* agreed that the Legal Subcommittee, at its fifty-second session, should consider the substantive items and reconvene the working groups recommended by the Committee, taking into account the concerns of all countries, in particular those of developing countries. Furthermore, the Assembly, urged States that had not yet become parties to the international treaties governing the uses of outer space to give consideration to ratifying or acceding to those treaties in accordance with their domestic law, as well as incorporating them in their national legislation. It also endorsed the decision of the Committee to grant permanent observer status to the Ibero-American Institute of Aeronautic and Space Law and Commercial Aviation and the Scientific Committee on Solar-Terrestrial Physics.

On the same date, the General Assembly also adopted, on the recommendation of the Fourth Committee, without a vote, decision 67/528 entitled "Increase in the membership of the Committee on the Peaceful Uses of Outer Space" in which it appointed Armenia, Costa Rica and Jordan as members of the Committee on the Peaceful Uses of Outer Space.

[261] For the report of the Committee on the Peaceful use of Outer Space, see *Official records of the General Assembly, Sixty-seventh Session, Supplement No. 20* (A/67/20).

5. Human rights[262]

(*a*) Sessions of the United Nations human rights bodies and treaty bodies

(i) *Human Rights Council*

The Human Rights Council, established in 2006,[263] meets as a quasi-standing body in three annual regular sessions and additional special sessions as needed. Reporting to the General Assembly, its agenda and programme of work provide the opportunity to discuss all thematic human rights issues and human rights situations that require the attention of the Assembly.

The Council's mandate includes the review on a periodic basis of the fulfilment of the human rights obligations of all Member States, including the members of the Council, over a cycle of four years through the universal periodic review.[264] The Council also assumed the thirty-eight country and thematic special procedures existing under its predecessor, the Commission on Human Rights, while reviewing the mandate and criteria for the establishment of these special procedures.[265] Moreover, based on the previous "1503 procedure", the confidential complaint procedure of the Council allows individuals and organizations to continue to bring complaints revealing a consistent pattern of gross and reliably attested violations of human rights to the attention of the Council.[266]

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[262] This section covers the resolutions adopted, if any, by the Security Council, the General Assembly and the Economic and Social Council. It also includes a selective coverage of the legal activities of the Human Rights Council, in particular activities of Special Rapporteurs and selected resolutions on specific human rights issues. Other legal developments in human rights may be found under the section in the present chapter entitled "Peace and security". The present section does not cover resolutions addressing human rights issues arising in particular States, nor does it cover in detail the legal activities of the treaty bodies (namely, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the Committee on the Rights of Persons with Disabilities). Detailed information and documents relating to human rights are available on the website of the Office of the United Nations High Commissioner for Human Rights at http://www.ohchr.org.

[263] General Assembly resolution 60/251 of 15 March 2006. For further details on its establishment, see the *United Nations Juridical Yearbook 2006*, chapter III, section 5.

[264] The first universal periodic review cycle covered the period 2008–2011. The second universal periodic review cycle commenced in 2012 and will run through 2016. For a list of States included and calendar of review sessions, see the section Universal Periodic Review at the homepage of the Human Rights Council at http://www.ohchr.org/.

[265] Human Rights Council decision 1/102 of 30 June 2006.

[266] More detailed information on the mandate, work and methods of the Human Rights Council is available at the homepage of the Human Rights Council at http://www.ohchr.org/.

In 2012, the Human Rights Council held its nineteenth, twentieth and twenty-first regular sessions[267] and one special session on "The deteriorating situation of human rights in the Syrian Arab Republic, and the recent killings in El-Houleh".[268]

(ii) *Human Rights Council Advisory Committee*

The Human Rights Council Advisory Committee was established pursuant to Human Rights Council resolution 5/1 of 18 June 2007.[269] The Advisory Committee is composed of eighteen experts, and functions as a think-tank for the Council, working under its direction and providing expertise in the manner and form requested by the Council, focusing mainly on studies and research-based advice, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council. The Advisory Committee held its eighth session from 20 to 24 February 2012 and its ninth session from 6 to 10 August 2012 in Geneva.[270]

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights, 1966[271] to monitor the implementation of the Covenant and its Optional Protocols[272] in the territory of States parties. The Committee held its 104th session in New York from 12 to 30 March 2012, and its 105th and 106th sessions in Geneva from 9 to 27 July 2012 and from 15 October to 2 November 2012, respectively.[273]

(iv) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[274] to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights, 1966[275] by its State parties. The Committee held

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[267] For the reports of the nineteenth and twentieth sessions, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 53* (A/67/53). For the report of the twenty-first session, see *ibid., Supplement No. 53A* (A/67/53/Add.1).

[268] For the report of the nineteenth special session, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 53* (A/67/53).

[269] The Human Rights Council Advisory Committee replaced the Sub-Commission for the Promotion and Protection of Human Rights as the main subsidiary body of the Human Rights Council.

[270] For the reports of the Advisory Committee on its eighth and ninth sessions, see A/HRC/AC/8/8 and A/HRC/AC/9/6, respectively.

[271] United Nations, *Treaty Series*, vol. 999, p. 171.

[272] Optional Protocol to the International Covenant on Civil and Political Rights, *ibid*; and Second Optional Protocol to the International Covenant on Civil and Political Rights, *ibid*., vol. 1642, p. 414.

[273] For the report of the 104th session, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 40* (A/67/40), vols. I and II. At the time of publication, the reports of the 105th and 106th sessions were forthcoming.

[274] Economic and Social Council resolution 1985/17 of 28 May 1985.

[275] United Nations, *Treaty Series*, vol. 993, p. 3.

its forty-eighth and forty-ninth sessions in Geneva from 30 April to 18 May and from 12 to 30 November 2012, respectively.[276]

(v) *Committee on the Elimination of Racial Discrimination*

The Committee on the Elimination of Racial Discrimination was established under the International Convention on the Elimination of All Forms of Racial Discrimination, 1966[277] to monitor the implementation of this Convention by its States parties. The Committee held its eightieth and eighty-first sessions in Geneva from 13 February to 9 March and from 6 to 31 August 2012, respectively.[278]

(vi) *Committee on the Elimination of Discrimination against Women*

The Committee on the Elimination of Discrimination against Women was established under the Convention on the Elimination of All Forms of Discrimination against Women, 1979[279] to monitor the implementation of this Convention by its States parties. The Committee held its fifty-first session in Geneva from 13 February to 2 March 2012, its fifty-second session in New York from 9 to 27 July 2012, and its fifty-third session in Geneva from 1 to 19 October 2012.[280]

(vii) *Committee against Torture*

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984[281] to monitor the implementation of the Convention by its States parties. In 2012, the Committee held its forty-eighth and forty-ninth sessions from 7 May to 1 June and from 29 October to 23 November, respectively, in Geneva.[282] In 2012, the Committee adopted general comment no. 3 on the implementation of article 14 (redress for victims of torture) by States parties.[283] The Subcommittee on Prevention of Torture, established in October 2006 under

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[276] For the reports of the forty-eighth and forty-ninth sessions, see *Official Records of the Economic and Social Council, 2013, Supplement No. 2* (E/2013/22).

[277] United Nations, *Treaty Series*, vol. 660, p. 195.

[278] For the report of the eightieth session, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 18* (A/67/18). At the time of publication, the report of the eighty-first session was forthcoming.

[279] United Nations, *Treaty Series*, vol. 1249, p. 13.

[280] For the report of the fifty-first session, see Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 38 (A/67/38). At the time of publication, the reports of the fifty-second and fifty-third sessions were forthcoming. See also Results of the fifty-first, fifty-second and fifty-third sessions of the Committee on the Elimination of Discrimination against Women: Note by the Secretariat (E/Cn.6/2013/CRP.1).

[281] United Nations, *Treaty Series*, vol. 1465, p. 85.

[282] For the report of the forty-eighth session, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 44* (A/67/44). At the time of publication, the report of the forty-ninth session was forthcoming.

[283] CAT/C/GC/3.

the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[284] held its sixteenth, seventeenth and eighteenth sessions from 20 to 24 February, from 18 to 22 June and from 12 to 16 November 2012, respectively.

(viii) *Committee on the Rights of the Child*

The Committee on the Rights of the Child was established under the Convention on the Rights of the Child, 1989[285] to monitor the implementation of this Convention by its States parties. The Committee held its fifty-ninth, sixtieth and sixty-first sessions in Geneva, from 16 January to 3 February, from 29 May to 15 June, and from 17 September to 5 October 2012, respectively.[286]

(ix) *Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families was established under the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990[287] to monitor the implementation of this Convention by its States parties in their territories. In 2012, the Committee held its sixteenth and seventeenth sessions in Geneva from 16 to 27 April and from 10 to 14 September, respectively.[288]

(x) *Committee on the Rights of Persons with Disabilities*

The Committee on the Rights of Persons with Disabilities is the body of independent experts established under the Convention on the Rights of Persons with Disabilities, 2006[289] and its 2006 Optional Protocol[290] to monitor the implementation of this Convention and Optional Protocol by States parties. The Committee meets in Geneva and holds two regular sessions per year. The Committee held its seventh session from 16 to 20 April 2012, and its eighth session from 17 to 28 September 2012.[291]

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[284] United Nations, *Treaty Series,* vol. 2375, p. 237.

[285] *Ibid*., vol. 1577, p. 3.

[286] For the report of the fifty-ninth session, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 41* (A/67/41). The reports of the sixtieth and sixty-first sessions will be part of the next biennial report of the Committee to the General Assembly.

[287] United Nations, *Treaty Series*, vol. 2220, p. 3.

[288] For the report of the sixteenth session, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 48* (A/67/48). At the time of publication, the report of the seventeenth session was forthcoming.

[289] United Nations, *Treaty Series*, vol. 2515, p. 3.

[290] *Ibid*., vol. 2518, p. 283.

[291] For the reports of the seventh and eighth sessions, see CRPD/C/7/2 and CRPD/C/8/2, respectively.

(xi) *Committee on Enforced Disappearances*

The Committee on Enforced Disappearances was established under the International Convention for the Protection of All Persons from Enforced Disappearance, 2006[292] to monitor the implementation of the Convention by its State parties. The Committee held its second and third sessions in Geneva from 26 to 30 March, and from 29 October to 9 November 2012, respectively.[293]

(*b*) Racism, racial discrimination, xenophobia and all forms of discrimination

(i) *Human Rights Council*

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere, submitted two reports to the Human Rights Council during 2012. The first report[294] focused on the prevention of racism, racial discrimination, xenophobia and related intolerance in line with the provisions of the Durban Declaration and Programme of Action. The second report was submitted[295] pursuant to General Assembly resolution 66/143 of 19 December 2011 entitled "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", in which the Special Rapporteur was requested to report on the persistence and resurgence of neo-Nazism, neo-Fascism and violent nationalist ideologies based on racial and national prejudice, and in particular on the countering of extremist political parties, movements and groups.

On 23 March 2012, the Council adopted resolution 19/25, entitled "Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief", without a vote, in which the Council, *inter alia*, expressed deep concern at the continued serious instances of derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief, as well as programmes and agendas pursued by extremist organizations and groups aimed at creating and perpetuating negative stereotypes about religious groups, in particular when condoned by Governments.

On 28 September 2012, the Council adopted resolution 21/33, entitled "From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance", by a vote of 37 in favour to 1 against, with 9 abstentions. In the resolution, the Council, *inter alia*, took note of the report of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action,[296] and decided that the Working Group should convene its eleventh session from 7 to 18 October 2013. The Council also took note of the report of the Working Group of

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[292] General Assembly resolution 61/177 of 20 December 2006, annex.

[293] For the report of the second session, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 56* (A/67/56). At the time of publication, the report of the third session was forthcoming.

[294] A/HRC/20/33 and Add.2.

[295] A/HRC/20/38.

[296] A/HRC/19/77.

Experts on People of African Descent,[297] and welcomed the draft Programme of Action for the Decade for People of African Descent contained in an addendum thereto.[298]

(ii) *General Assembly*

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere, submitted two reports to the General Assembly. In the first report,[299] the Special Rapporteur addressed the implementation of General Assembly resolution 66/143. The Special Rapporteur welcomed, *inter alia*, information provided regarding the ratification of a range of instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, 1966,[300] and its incorporation into the domestic order at the constitutional level. He also appreciated the recognition by some States of the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual communications. He urged those States that have not yet done so to ratify the Convention and to make the declaration under its article 14.

In his second report to the General Assembly,[301] submitted pursuant to General Assembly resolution 66/144 of 19 December 2011, entitled "Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action," the Special Rapporteur focused on key issues and challenges posed by the increasing use of the Internet to disseminate racist ideas and incite racial hatred and violence and on identifying possible measures that can be taken in line with the provisions of the Durban Declaration and Programme of Action.

The Secretary-General also submitted a report to the General Assembly pursuant to resolution 66/144, which summarized information and contributions received from various actors and Member States.[302] The Secretary-General concluded, *inter alia*, that ever-stronger political will and urgent measures were needed to reverse worrisome trends of increasingly hostile racist and xenophobic attitudes and violence and encouraged Member States that had not yet done so to develop and implement national action plans in order to combat racial discrimination and related intolerance. The report also encouraged international and regional organizations to intensify collaboration in fighting against racism, racial discrimination, xenophobia and related intolerance.

On 20 December 2012, the General Assembly adopted resolution 67/154 entitled "Glorification of Nazism: inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", on the recommendation of the Third Committee, by a recorded vote of 129 in favour to 3 against, with 54 abstentions. The Assembly noted with concern the increase in the num-

[297] A/HRC/21/60.

[298] A/HRC/21/60/Add.2.

[299] A/67/328.

[300] United Nations, *Treaty Series*, vol. 660, p. 195.

[301] A/67/326.

[302] A/67/325.

ber of racist incidents worldwide, including the rise of skinhead groups, which have been responsible for many of these incidents, as well as the resurgence of racist and xenophobic violence targeting members of national, ethnic, religious or linguistic minorities. It reaffirmed that such acts may be qualified to fall within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966, that they may not be justified as exercises of the rights to freedom of peaceful assembly and of association as well as the rights to freedom of opinion and expression, and that they may fall within the scope of article 20 of the International Covenant on Civil and Political Rights, 1966, and may legitimately be restricted as set out in articles 19, 21 and 22 of the Covenant.

On the same day, the General Assembly adopted resolution 67/155 entitled "Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action", on the recommendation of the Third Committee, by a recorded vote of 138 in favour to 7 against, with 48 abstentions. The Assembly underlined, *inter alia*, the imperative need to address all the contemporary forms and manifestations of racial discrimination, taking into account the object and purpose of the provisions of article 20 of the International Covenant on Civil and Political Rights, 1966, article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966, and general recommendation XV (42) of the Committee on the Elimination of Racial Discrimination.[303]

(*c*) Right to development and poverty reduction

(i) *Human Rights Council*[304]

The Special Rapporteur on extreme poverty and human rights, Ms. Magdalena Sepúlveda Carmona, submitted her report to the Human Rights Council.[305] The report set out the final draft of the guiding principles on extreme poverty and human rights and contains the foundational principles; implementation requirements; specific rights; obligations of international assistance and cooperation; the role of non-State actors, including business enterprises; implementation and monitoring; and interpretation of the principles.

On 23 March 2012, the Council adopted resolution 19/34 entitled "The right to development", by a recorded vote of 46 in favour, with 1 abstention, in which it, *inter alia*, took note of the report of the Working Group on the Right to Development on its twelfth session.[306]

On 27 September 2012, the Council adopted resolution 21/11 entitled "Guiding principles on extreme poverty and human rights", without a vote. The Council, *inter alia*, adopted the guiding principles on extreme poverty and human rights as a useful tool for

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[303] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18* (A/48/18), chap. VIII, sect. B.

[304] See also resolution 19/38 of 23 March 2012 entitled "The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation".

[305] A/HRC/21/39.

[306] A/HRC/19/52 and Corr.1.

States in the formulation and implementation of poverty reduction and eradication policies, as appropriate.

(ii) *General Assembly*[307]

In accordance with Human Rights Council resolution 17/13 of 17 June 2011, the Secretary-General submitted the report of the Special Rapporteur on extreme poverty and human rights to the General Assembly.[308] The report analyzed the obstacles to access to justice for persons living in poverty and emphasized that improving such access required tackling a range of legal and extralegal obstacles present both within and outside of the formal justice system, including social, economic and structural obstacles.

The Secretary-General and the United Nations High Commissioner for Human Rights submitted a consolidated report to the General Assembly entitled "The right to development",[309] summarising the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) with regard to the promotion and realization of the right to development.

On 20 December 2012, the General Assembly adopted without a vote resolution 67/164 entitled "Human rights and extreme poverty", on the recommendation of the Third Committee, in which it reaffirmed that the existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights and renders democracy and popular participation fragile. It took note with appreciation of the guiding principles on extreme poverty and human rights, adopted by the Human Rights Council in its resolution 21/11 as a useful tool for States in the formulation and implementation of poverty reduction and eradication policies, as appropriate.

On the same day, the General Assembly adopted resolution 67/171 entitled "The right to development", on the recommendation of the Third Committee, by a recorded vote of 154 in favour to 4 against, with 28 abstentions. The Assembly, *inter alia*, reaffirmed that the realization of the right to development is essential to the implementation of the Vienna Declaration and Programme of Action, which regards all human rights as universal, indivisible, interdependent and interrelated, places the human person at the centre of development and recognizes that, while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. It further reaffirmed the primary responsibility of States to create national and international conditions favourable to the realization of the right to development, as well as their commitment to cooperate with each other to that end.

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[307] See also resolutions 67/40 entitled "Relationship between disarmament and development" and 67/141 entitled "Implementation of the outcome of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly".

[308] A/67/278.

[309] A/HRC/21/28.

(*d*) Right of peoples to self-determination

(i) *Universal realization of the right of peoples to self-determination*

General Assembly

On 18 December 2012, the General Assembly adopted resolution 67/134 entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", on the recommendation of the Fourth Committee, by a record vote of 175 in favour to 3 against, with 2 abstentions. The Assembly recalled, *inter alia,* its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all its subsequent resolutions concerning the implementation of the Declaration, as well as the relevant resolutions of the Security Council. The Assembly also bore in mind its resolution 65/119 of 10 December 2010, by which it declared the period 2011–2020 the Third International Decade for the Eradication of Colonialism. It further reaffirmed its determination to continue to take all steps necessary to bring about the complete and speedy eradication of colonialism and the faithful observance by all States of the relevant provisions of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Universal Declaration of Human Rights.[310] The Assembly also requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to formulate specific proposals to bring about an end to colonialism and to report thereon to the General Assembly at its sixty-eighth session.

On 20 December 2012, the General Assembly adopted without a vote resolution 67/157 entitled "Universal realization of the right of peoples to self-determination", on the recommendation of the Third Committee. The General Assembly reaffirmed, *inter alia,* that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights. The Assembly also requested the Human Rights Council to continue to give special attention to violations of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation.

(ii) *Mercenaries*

a. Human Right Council

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination submitted its report to the Human Rights Council,[311] in which it discussed the project to collect and analyse national legislation on private military and security companies. The Working Group also made recommendations for Member States, including encouraging them to continue to develop national legislation on private military and security companies, and noted that

[310] General Assembly resolution 217 A (III) of 10 December 1948.

[311] A/HRC/21/43.

national legislation should be complemented by a strong international regulatory framework. In this context, it recommended that Member States consider the possibility of developing a binding international instrument on this topic. The Working Group further recommended that Member States ensure accountability for human rights violations involving private military and security companies, and provide victims of human rights violations with an effective remedy.

On 27 September 2012, the Human Rights Council adopted resolution 21/8 entitled "The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", by a recorded vote of 34 in favour to 12 against, with 1 abstention. The Council reaffirmed, *inter alia,* that the use of mercenaries and their recruitment, financing, protection and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. The Council also urged all States to take the necessary steps and to exercise the utmost vigilance against the threat posed by the activities of mercenaries, and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training, protection and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State or to dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination. The Council further called upon all States that had not yet become parties to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989,[312] to consider taking the necessary action to do so. The Council also called upon the international community and all States, in accordance with their obligations under international law, to cooperate with and assist the judicial prosecution of those accused of mercenary activities in transparent, open and fair trials.

b. General Assembly

On 20 December 2012, the General Assembly adopted resolution 67/159 entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", on the recommendation of the Third Committee, by a record vote of 128 in favour to 54 against, with 7 abstentions. The Assembly, *inter alia*, took note with appreciation of the latest report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.[313] It reaffirmed that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. The Assembly welcomed the holding of the second session of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies. It further requested the Working Group on the use of mercenaries to continue the work already done by previous Special Rapporteurs on the use of mercenaries on the strengthening of the international legal framework in this field, taking into account the

[312] United Nations, *Treaty Series,* vol. 2163, p. 75.

[313] A/67/340.

proposal for a new legal definition of a mercenary drafted by the Special Rapporteur in his report to the Commission on Human Rights at its sixtieth session.[314]

(*e*) Economic, social and cultural rights

Human Rights Council

On 22 March 2012, the Human Rights Council adopted resolution 19/5, entitled "Question of the realization in all countries of economic, social and cultural rights", without a vote. The Council, *inter alia*, called upon all States to give full effect to economic, social and cultural rights, and to consider signing and ratifying, and States parties to implement, the International Covenant on Economic, Social and Cultural Rights, 1966,[315] as well as other international instruments relating to the realization of economic, social and cultural rights. The Council encouraged all States that had not yet signed and ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008,[316] to consider doing so with a view to its early entry into force. The Council also called upon the States parties to the Covenant to withdraw reservations incompatible with the object and purpose of the Covenant, and to consider reviewing other reservations with a view to withdrawing them.

(i) *Right to food*

a. Human Rights Council

The Special Rapporteur on the right to food, Mr. Olivier De Schutter, submitted his report to the Human Rights Council,[317] in which the links between health and malnutrition are addressed.

On 22 March 2012, the Human Rights Council adopted resolution 19/7 entitled "The right to food", without a vote, in which the Council, *inter alia*, reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger so as to be able to fully develop and maintain his or her physical and mental capacities. The Council called upon States parties to the International Covenant on Economic, Social and Cultural Rights to fulfil their obligations under article 2, paragraph 1, and article 11, paragraph 2 thereof, in particular with regard to the right to adequate food.

b. General Assembly

On 20 December 2012, the General Assembly adopted resolution 67/174 entitled "The right to food", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, took note with appreciation of the interim report of the Special Rapporteur on

[314] E/CN.4/2004/15, para. 47.

[315] United Nations, *Treaty Series*, vol. 993, p. 3.

[316] General Assembly resolution 63/117, annex.

[317] A/HRC/19/59 and Corr.1.

the right to food.[318] It urged States that had not yet done so to favourably consider becoming parties to the Convention on Biological Diversity, 1992,[319] and to consider becoming parties to the International Treaty on Plant Genetic Resources for Food and Agriculture[320] as a matter of priority. The Assembly stressed that States parties to the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights[321] should consider implementing that Agreement in a manner that is supportive of food security, while being mindful of the obligation of Member States to promote and protect the right to food. The Assembly recalled General Comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights on the right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, 1966), in which the Committee noted, *inter alia*, the importance of ensuring sustainable access to water resources for human consumption and agriculture in realization of the right to adequate food.

(ii) *Right to education*

a. Human Rights Council

The Special Rapporteur on the right to education, Dr. Kishore Singh, submitted his annual report to the Human Rights Council.[322] The report examined national and international norms and standards, as well as policies regarding quality in education. The Special Rapporteur underscored the need to promote the adoption of norms at the national level establishing the right to quality education, consistent with the international legal human rights framework and relevant initiatives at the national, regional and international levels. In conclusion, the Special Rapporteur provided recommendations aimed at promoting quality education.

On 5 July 2012, the Human Rights Council adopted resolution 20/7 entitled "The right to education: follow-up to Human Rights Council resolution 8/4", without a vote, in which the Council, *inter alia*, reaffirmed the human right of everyone to education and urged States to give full effect to right to education by promoting quality education, among other things.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the right to education,[323] which focused on technical and vocational education and training from a right to education perspective. It highlighted international obligations as well as political commitments to promote technical and vocational education and training.

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[318] A/67/268.

[319] United Nations, *Treaty Series*, vol. 1760, p. 79.

[320] *Ibid*., vol. 2400, p. 303.

[321] See *Legal Instruments Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15 April 1994* (GATT secretariat publication, Sales No. GATT/1994–7).

[322] A/HRC/20/21.

[323] A/67/310.

(iii) *Right to adequate standard of living, including adequate housing and to be free of adverse effects of toxic waste*

a. Human Rights Council

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms. Raquel Rolnik, submitted her report to the Human Rights Council.[324] The report focused on the question of women and their right to adequate housing to ensure that women everywhere are able to enjoy this right in practice. Specifically, building on work previously done under the mandate, the report focused on recent legal and policy advancements in the area of women's right to adequate housing, including issues related to inheritance, land and property, as well as strategies for overcoming persistent gaps in implementation of those laws and policies.

On 22 March 2012, the Human Rights Council adopted resolution 19/4 entitled "Adequate housing as a component of the right to an adequate standard of living in the context of disaster settings", without a vote. The Council, *inter alia*, encouraged States and relevant actors to respect, protect and fulfil the right to adequate housing as a component of the right to an adequate standard of living in their broader disaster risk reduction, prevention and preparedness initiatives, as well as in all phases of disaster response and recovery.

b. General Assembly

The Secretary-General transmitted to the General Assembly the annual report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, in accordance with Human Rights Council resolution 15/8.[325] The report analysed the ruling paradigm of housing policies that focus on housing finance as the main means of promoting homeownership. The report assessed the impact of prevalent housing finance policies on the right to adequate housing of those living in poverty. The Special Rapporteur called for a paradigm shift from housing policies based on the financialization of housing to a human rights-based approach to housing policies.

(iv) *Access to safe drinking water and sanitation*

a. Human Rights Council

The Special Rapporteur on the human right to safe drinking water and sanitation, Ms. Catarina de Albuquerque, submitted her report to the Human Rights Council,[326] which focused on the links between stigma and the human rights framework as it related to water and sanitation. The Special Rapporteur found that stigma, as a deeply entrenched social and cultural phenomenon, lay at the root of many human rights violations and resulted in entire population groups being disadvantaged and excluded. Based on this analysis, the

[324] A/HRC/19/53.

[325] A/67/286.

[326] A/HRC/21/42.

Special Rapporteur identified strategies for preventing and responding to stigma from a human rights perspective, before concluding with a set of recommendations.

On 27 September 2012, the Human Rights Council adopted resolution 21/2 entitled "The human right to safe drinking water and sanitation", without a vote. The Council welcomed the fourth annual report of the Special Rapporteur to the Human Rights Council, and reaffirmed that States have the primary responsibility to ensure the full realization of all human rights, and must take steps, nationally and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, to achieve progressively the full realization of the right to safe drinking water and sanitation by all appropriate means, including particularly the adoption of legislative measures in the implementation of their human rights obligations. The Council expressed deep concern at the negative impact of discrimination, marginalization and stigmatization on the full enjoyment of the human right to safe drinking water and sanitation.

b. General Assembly

The Special Rapporteur on the human right to safe drinking water and sanitation submitted her report to the General Assembly,[327] in which she argued for a post-2015 development agenda that integrates equality and non-discrimination, paired with equity. The Special Rapporteur emphasized the importance of proposing goals, targets and indicators that effectively encompass these dimensions.

(v) *Right to health*

a. Human Rights Council

The Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste, Mr. Calin Georgescu, submitted his report to the Human Rights Council.[328] In the report, the Special Rapporteur focused on the adverse effects on the enjoyment of human rights of the unsound management of hazardous substances and waste used in and generated by extractive industries. Special Rapporteur proposed that States should develop a comprehensive, legally-binding regime to ensure chemical safety throughout the lifecycle of all chemicals, both synthetic and naturally-occurring, with particular attention to the needs of the most vulnerable. In this regard, the Special Rapporteur considered that a treaty on mercury is crucial, and he posited that the current array of narrowly focused legally-binding agreements for chemicals and wastes do not adequately address, let alone eliminate, exposure to the numerous hazardous substances and wastes generated by extractive industries that result in human rights impacts.

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Anand Grover, submitted his report to the Human Rights Council.[329] The report outlined international human rights and other instruments related to occupational health, and addressed occupational health

[327] A/67/270.

[328] A/HRC/21/48.

[329] A/HRC/20/15.

in the informal economy, focusing on the needs of vulnerable and marginalized groups. It also addressed the obligation of States to formulate, implement, monitor and evaluate occupational health laws and policies, as well as the requirement for the participation of workers at all stages of those activities.

On 27 September 2012, the Council adopted resolution 21/6 entitled "Preventable maternal mortality and morbidity and human rights", without a vote. The Council, *inter alia,* encouraged States and other relevant stakeholders, including national human rights institutions and non-governmental organizations, to take action at all levels to address the interlinked root causes of maternal mortality and morbidity, such as poverty, malnutrition, harmful practices, lack of accessible and appropriate health-care services, information and education, and gender inequality, and to pay particular attention to eliminating all forms of violence against women and girls.

b. General Assembly

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health submitted his interim report to the General Assembly,[330] which focused on health financing in the context of the right to health.

(vi) *Cultural rights*

a. Human Rights Council

The Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, submitted a report to the Human Rights Council[331] entitled "The right to enjoy the benefits of scientific progress and its applications", in which she stressed the strong link of this right with the right to participate in cultural life, as well as other human rights. The Special Rapporteur considered that the normative content included (*a*) access by everyone without discrimination to the benefits of science and its applications, including scientific knowledge; (*b*) opportunities for all to contribute to the scientific enterprise and freedom indispensable for scientific research; (*c*) participation of individuals and communities in decision-making and the related right to information; and (*d*) an enabling environment fostering the conservation, development and diffusion of science and technology.

On 5 July 2012, the Human Rights Council adopted resolution 20/11 entitled "Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity", without a vote. The resolution took note of General Comment No. 21 on the right of everyone to take part in cultural life, adopted by the Committee on Economic, Social and Cultural Rights on 13 November 2009. The Council reaffirmed that cultural rights are an integral part of human rights, which are universal, indivisible, interrelated and interdependent. It further recognized the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its applications, and recalled that, as stated in

[330] A/67/302.

[331] A/HRC/20/26. The mandate of the Special Rapporteur was established by resolution 19/6 of the Human Rights Council entitled "Mandate of the Special Rapporteur in the field of cultural rights".

the Universal Declaration on Cultural Diversity,[332] no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

b. General Assembly

The Special Rapporteur in the field of cultural rights submitted a report to the General Assembly,[333] which focused on the enjoyment of cultural rights by women on an equal basis with men. The report underlined the right of women to have access to, participate in and contribute to all aspects of cultural life, which encompassed their right to actively engage in identifying and interpreting cultural heritage and to decide which cultural traditions, values or practices are to be kept, reoriented, modified or discarded.

(f) Civil and political rights

(i) *Torture*

a. Human Rights Council

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Juan Mendez, submitted his report to the Human Rights Council.[334] The thematic focus of the report, commissions of inquiry, was selected by the Special Rapporteur to help deepen the international community's understanding on when such commissions should be created by States in response to patterns or practices of torture and other forms of ill-treatment. The Special Rapporteur indicated that the purpose of the report was to generate further discussion of the standards that apply to the establishment and conduct of commissions of inquiry, and the relationship between such commissions and the fulfilment by States of their international legal obligations with regard to torture and other forms of ill-treatment.

b. General Assembly

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment presented his interim report to the General Assembly,[335] which focused on the death penalty and the prohibition of torture and cruel, inhuman and degrading treatment. In this report, the Special Rapporteur recalled that actual practices of the death penalty must comply with the absolute prohibition of torture and cruel, inhuman and degrading treatment and explored whether States can guarantee that the method of execution or the conditions of persons sentenced to death do not inflict illegitimately severe pain and suffering.

On 20 December 2012, the General Assembly adopted resolution 67/161 entitled "Torture and other cruel, inhuman or degrading treatment or punishment", on the recommendation of its Third Committee, without a vote. The Assembly, *inter alia*, called upon States

[332] UNESCO, *Records of the General Conference, Thirty-first Session, Paris, 15 October–3 November 2001*, vol. 1 and corrigendum, *Resolutions*, chap. V, resolution 25.

[333] A/67/287.

[334] A/HRC/19/61.

[335] A/67/279.

to fully implement the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and to adopt a victim-oriented approach in the fight against such abuse. It emphasized that acts of torture in armed conflict were violations of international humanitarian law and constituted war crimes; that such acts could constitute crimes against humanity; and that perpetrators must be prosecuted. The Assembly further urged all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,[336] and consider signing and ratifying its Optional Protocol, 2002.[337]

(ii) *Arbitrary detention and extrajudicial, summary and arbitrary execution*

a. Human Rights Council

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christof Heyns, in his annual report to the Human Rights Council[338] focused on the mechanisms that are in place to provide greater protection to the right to life of journalists. The Special Rapporteur recommended that the approach should be to elevate the killing of journalists from the local level to the national and international levels and proposed measures aimed at ensuring greater accountability and identified underutilized entry points at all levels that could be used by journalists at risk.

b. General Assembly

The Special Rapporteur on extrajudicial, summary or arbitrary executions submitted his report to the General Assembly,[339] in which he considered the problem of error and the use of military tribunals in the context of fair trial requirements. The Special Rapporteur also examined the constraint that the death penalty may be imposed only for the most serious crimes: those involving intentional killing. Lastly, he considered the issues of collaboration and complicity, in addition to transparency in respect of the use of the death penalty.

On 20 December 2012, the General Assembly adopted resolution 67/168, on the recommendation of the Third Committee, entitled "Extrajudicial, summary or arbitrary executions", by a recorded vote of 117 in favour to none, with 67 abstentions. The Assembly, *inter alia*, reiterated the obligation of all States under international law to conduct thorough, prompt and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, while ensuring the right of every person to a fair hearing by a competent, independent and impartial tribunal established by law, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, to put an end to impunity and to prevent the further occurrence of

[336] United Nations, *Treaty Series*, vol. 1465, p. 85.

[337] *Ibid*., vol. 2375, p. 237.

[338] A/HRC/20/22 and Corr.1.

[339] A/67/275.

such executions, as recommended in the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.[340]

(iii) *Enforced disappearances and missing persons*

a. Human Rights Council

The Working Group on Enforced or Involuntary Disappearances submitted its annual report to the Human Rights Council,[341] detailing communications and cases examined by the Working Group during its three sessions in 2012. The report also contains a thematic section on reparation for enforced disappearances and includes information on other activities carried out by the Working Group.

On 27 September 2012, the Human Rights Council adopted resolution 21/4, without a vote, entitled "Enforced or involuntary disappearances". In the resolution, the Council, *inter alia*, called upon States that had not yet done so to consider signing, ratifying or acceding to the Convention for the Protection of All Persons from Enforced Disappearance, 2006,[342] and to consider the option provided for in articles 31 and 32 of the Convention.[343] The Council also recognized the importance of the Declaration on the Protection of All Persons from Enforced Disappearance, 1992,[344] as a body of principles for all States designed to punish enforced disappearances, to prevent their commission and to help victims of such acts and their families to seek fair, prompt and adequate reparation.

b. General Assembly

On 20 December 2012, the General Assembly adopted resolution 67/180 entitled "International Convention for the Protection of All Persons from Enforced Disappearance", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, welcomed the report of the Secretary-General on this item[345] and took note with interest of all the general comments of the Working Group on this topic, including the most recent one on the right to recognition as a person before the law in the context of enforced disappearances.[346]

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[340] Economic and Social Council resolution 1989/65, annex.

[341] A/HRC/22/45 and Corr.1.

[342] United Nations, *Treaty Series*, registration No. 48088 (no volume number had been determined for this Convention at the time of preparing this publication).

[343] Under these articles, States parties may declare that they recognize the competence of the Committee established by the Convention to receive and consider communications from or on behalf of individuals (article 31) or from another State party (article 32).

[344] General Assembly resolution 47/133.

[345] A/67/271.

[346] A/HRC/19/58/Rev.1, sect. II.H.

(iv) *Integration of human rights of women and a gender perspective*[347]

a. Human Rights Council

The Office of the United Nations High Commissioner for Human Rights submitted a report to the Human Rights Council, entitled "Thematic study on the issue of violence against women and girls and disability".[348] The report analysed national legislation, policies and programmes for the protection and prevention of violence against women and girls with disabilities. The report highlighted the remaining challenges in addressing the root causes of violence against women and girls with disabilities and incorporating women and girls with disabilities into gender-based violence programmes. The study concluded with recommendations on legislative, administrative, policy and programmatic measures to address this issue, with emphasis on the need for a holistic approach aimed at eliminating discrimination against women and girls with disabilities, promoting their autonomy and addressing specific risk factors that expose them to violence.

The Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, submitted a report to the Human Rights Council,[349] in which she focused on the topic of gender-related killings of women. The Special Rapporteur stressed that States' responsibility to act with due diligence in the promotion and protection of women's rights is largely lacking as regards the killing of women.

On 5 July 2012, the Council adopted resolution 20/6 entitled "Elimination of discrimination against women", without a vote, in which the Council, *inter alia*, recognized the constructive approach of the Working Group on the issue of discrimination against women in law and in practice. It called upon the Working Group to maintain such an approach and dialogue with States to address this issue in all spheres from the perspective of States' obligations under international human rights law, taking into account the good practices that have been transformative in different contexts and in the light of the different realities that women face.

On the same day, the Human Rights Council adopted resolution 20/12 entitled "Accelerating efforts to eliminate all forms of violence against women: remedies for women who have been subjected to violence", without a vote. The Council, *inter alia*, urged States to place a high priority on removing gender bias from the administration of justice and enhancing the capacity of law enforcement officials to deal appropriately with violence against women, including by providing systematic gender-sensitivity and awareness training, as appropriate, for police and security forces, prosecutors, judges and lawyers, integrating gender into security sector reform initiatives, developing protocols and guidelines, and enhancing or putting in place appropriate accountability measures for adjudicators.

b. General Assembly

The Special Rapporteur on violence against women, its causes and consequences submitted her report to the General Assembly.[350] The report provides an overview of the Spe-

[347] For more information on the rights of women, see section 6 of this chapter.

[348] A/HRC/20/5.

[349] A/HRC/20/16.

[350] A/67/227.

cial Rapporteur's activities, discusses the issue of violence against women with disabilities and presents specific recommendations to address this issue.

On 20 December 2012, the General Assembly adopted resolution 67/144, on the recommendation of the Third Committee, entitled "Intensification of efforts to eliminate all forms of violence against women", without a vote. The Assembly, *inter alia*, welcomed the report of the Secretary-General on this item[351] as well as the report of the Special Rapporteur. It stressed that "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. It also stressed the importance of States strongly condemning all forms of violence against women and refraining from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women.[352]

On the same day, the General Assembly adopted without a vote resolution 67/148 entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly", on the recommendation of the Third Committee. The Assembly, *inter alia*, invited States parties to the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW),[353] to review their reservations lodged to the Convention regularly with a view to withdrawing them, and to take into consideration the concluding observations as well as the general recommendations of the Committee on the Elimination of All Forms of Discrimination against Women.

(v) *Trafficking*

a. Human Rights Council

The Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo, submitted her annual report to the Human Rights Council,[354] in which she provided an overview of the activities undertaken and a thematic analysis of a human rights-based approach to the administration of criminal justice in cases of trafficking in persons. The Special Rapporteur outlined the international legal framework and reviewed key components, including the criminalization of trafficking offences, the non-criminalization of trafficked persons, the provision of protection and support for victim witnesses, the exercise of due diligence in the investigation and prosecution of cases, respect for the rights of suspects, the imposition of proportionate sanctions and penalties, efforts to address corruption and to seize assets, and international cooperation. Drawing on State responses to her questionnaire, she provided an overview of trends in State practice, highlighting emerging good practices and common challenges.

On 5 July 2012, the Human Rights Council adopted resolution 20/1 entitled "Trafficking in persons, especially women and children: access to effective remedies for trafficked

[351] A/67/220.

[352] General Assembly resolution 48/104, annex.

[353] United Nations, *Treaty Series*, vol. 1249, p. 13.

[354] A/HRC/20/18.

persons and their right to an effective remedy for human rights violations" without a vote. The Council, *inter alia*, encouraged States to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking[355] as a useful tool in integrating a human rights-based approach into their responses to provide a full range of effective remedies to trafficked persons and, in the case of trafficked children, to uphold, at a minimum, the general principles of the Convention on the Rights of the Child. It also encouraged States, guided by their human rights obligations and with a view to respect, protect and fulfil the human rights of trafficked persons, including their right to an effective remedy for human rights violations, to implement a number of measures outlined in the resolution.

b. General Assembly

The Special Rapporteur on trafficking in persons, especially women and children submitted her annual report to the General Assembly.[356] The report included a thematic analysis of the issue of human trafficking in supply chains, in which the Special Rapporteur examined the existing international legal framework and standards applicable to States and businesses, in addition to non-binding codes of conduct and principles adopted by businesses, as part of efforts to prevent and combat human trafficking.

On 20 December 2012, the General Assembly adopted resolution 67/145, on the recommendation of the Third Committee, entitled "Trafficking in women and girls", without a vote. The Assembly, *inter alia*, took note of the report of the Secretary-General on this item,[357] as well as the report of the Special Rapporteur. It urged Member States that have not yet done so to consider ratifying or acceding to, as a matter of priority, the United Nations Convention against Transnational Organized Crime, 2000,[358] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000,[359] supplementing this Convention, taking into consideration the central role of those instruments in the fight against trafficking in persons, and urged States parties to those instruments to implement them fully and effectively. The Assembly also called upon all Governments to criminalize all forms of trafficking in persons, and to bring to justice and punish the offenders and intermediaries involved, including public officials involved with trafficking in persons, whether local or foreign, through the competent national authorities, either in the country of origin of the offender or in the country in which the abuse occurs, in accordance with due process of law, as well as to penalize persons in authority found guilty of sexually assaulting victims of trafficking in their custody. It further urged Governments to take all appropriate measures to ensure that victims of trafficking are not penalized or prosecuted for acts committed as a direct result of being trafficked and that they do not suffer from revictimization as a result of actions taken by Government authorities, and encouraged Governments to prevent, within their legal framework and in accordance with national policies, victims of trafficking in persons from being prosecuted for their illegal entry or residence.

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[355] E/2002/68/Add.1.

[356] A/67/261.

[357] A/67/170.

[358] United Nations, *Treaty Series*, vol. 2225, p. 209.

[359] *Ibid*., vol. 2237, p. 343.

(vi) *Freedom of religion, belief and expression*

a. Human Rights Council

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, submitted a report to the Human Rights Council which explored the issue of the protection of journalists and media freedom, and focused particularly on situations outside of armed conflict, and provided a set of conclusions and recommendations.[360]

On 22 March 2012, the Human Rights Council adopted resolution 19/8 entitled "Freedom of religion or belief", without a vote. The Council, *inter alia*, stressed that everyone has the right to freedom of thought, conscience and religion or belief, which includes the freedom to have or to adopt a religion or belief of one's choice, and the freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in teaching, practice, worship and observance, including the right to change one's religion or belief. The Council emphasized that States should exercise due diligence to prevent, investigate and punish acts of violence against persons belonging to religious minorities, regardless of the perpetrator, and that failure to do so may constitute a human rights violation.

b. General Assembly

The Special Rapporteur on freedom of religion or belief, Mr. Heiner Bielefeldt, submitted his interim report entitled "Elimination of all forms of religious intolerance" to the General Assembly.[361] In his report, the Special Rapporteur focused on the right of conversion as part of freedom of religion or belief. The Special Rapporteur outlined the international human rights framework and specific violations for four identified subcategories of conversion, addressed some typical misunderstandings and presented a set of conclusions and recommendations.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted his report to the General Assembly, in which he explored hate speech and incitement to hatred.[362] The Special Rapporteur presented an overview of the phenomenon, the relevant international norms and standards, including distinctions between types of hate speech, and examples of domestic legislation that contravene international norms and standards, and presented a set of recommendations.

The General Assembly adopted two resolutions addressing the issue of freedom of religion or belief on 20 December 2012, both adopted on the recommendation of the Third Committee, without a vote. In resolution 67/178 entitled "Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief", the General Assembly, *inter alia*, took note of the report of the Secretary-General on steps taken by States to combat intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against

[360] A/HRC/20/17.

[361] A/67/303.

[362] A/67/357.

persons, based on religion or belief.[363] It also called upon all States to take a number of measures outlined in the resolution to, *inter alia*, foster religious freedom and tolerance.

In resolution 67/179 entitled "Freedom of religion or belief", the General Assembly, *inter alia*, stressed that the right to freedom of thought, conscience and religion or belief applies equally to all persons, regardless of their religion or belief and without any discrimination as to their equal protection by the law. It emphasized that restrictions on the freedom to manifest one's religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, are non-discriminatory and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion or belief. The Assembly also emphasized that that freedom of religion or belief and freedom of expression are interdependent, interrelated and mutually reinforcing, and stressed further the role that these rights can play in the fight against all forms of intolerance and of discrimination based on religion or belief.

(g) Rights of the child

(i) *Human Rights Council*

The Special Representative of the Secretary-General for Children and Armed Conflict, Ms. Radhika Coomaraswamy, submitted her annual report to the Human Right Council.[364] In this report, the Special Representative urged States parties to the Convention on the Rights of the Child, 1989,[365] to strengthen national and international measures for the prevention of recruitment of children into the armed forces or armed groups and their use in hostilities, in particular by signing and ratifying the Optional Protocol to the Convention on the involvement of children in armed conflict, 2000,[366] and enacting legislation to explicitly prohibit and criminalize the recruitment of children into armed forces or groups and their use in hostilities. States parties to the Convention and to the Optional Protocol were further urged to implement the recommendations of the Committee on the Rights of the Child as a matter of priority and to submit timely reports to the Committee under the Optional Protocol. To this end, States parties were encouraged to establish effective interministerial coordination mechanisms with a view to ensuring comprehensive measures to prevent and protect children from offences under the Optional Protocol.

On 23 March 2012, the Human Rights Council adopted resolution 19/37 entitled "Rights of the child". In this resolution, the Council, *inter alia*, emphasized that the Convention on the Rights of the Child, 1989, constitutes the standard in the promotion and protection of the rights of the child. The Council, concerned at the great number of reservations to the Convention, urged States parties to withdraw reservations incompatible

[363] A/67/296.

[364] A/HRC/21/38.

[365] United Nations, *Treaty Series*, vol. 1577, p. 3.

[366] *Ibid*., vol. 2173, p. 222.

with the object and purpose of the Convention and the Optional Protocols thereto[367] and to consider reviewing regularly other reservations with a view to withdrawing them.

(ii) *General Assembly*

The Special Representative of the Secretary-General for Children and Armed Conflict submitted her annual report to the General Assembly,[368] which provided an overview of progress on the children and armed conflict agenda, followed by an account of new developments. The Special Representative urged Member States to enact appropriate national legislation to criminalize grave violations against children, including the recruitment and use of children in armed forces and armed groups, which had been defined in the Rome Statute of the International Criminal Court, 1998,[369] as a war crime, and also to bring adult recruiters to justice in national courts.

On 20 December 2012, the General Assembly adopted two resolutions, on the recommendation of the Third Committee.[370] One of these resolutions is highlighted below.

In resolution 67/152, adopted without a vote, the General Assembly urged, *inter alia,* States that had not yet done so to become parties to the Convention on the Rights of the Child, 1989 and the Optional Protocols thereto and to implement them. The Assembly further called upon States parties to withdraw reservations that are incompatible with the object and purpose of the Convention or the Optional Protocols thereto, and to consider reviewing regularly other reservations with a view to withdrawing them in accordance with the Vienna Declaration and Programme of Action, 1993.

(iii) *Security Council*

On 19 September 2012, the Security Council adopted resolution 2068 (2012) which focused on children and armed conflict. The Security Council noted, *inter alia*, relevant provisions of the Rome Statute of the International Criminal Court, 1998, and strongly condemned all violations of applicable international law involving the recruitment and use of children by parties to armed conflict as well as their re-recruitment, killing and maiming, rape and other sexual violence, abductions, attacks on schools and/or hospitals as well as denial of humanitarian access by parties to armed conflict and demanded that all relevant parties immediately put an end to such practices and take special measures to protect children.

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[367] Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (United Nations, *Treaty Series*, vol. 2171, p. 227); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (*ibid*., vol. 2173, p. 222); and Optional Protocol to the Convention on the Rights of the Child on a communications procedure (General Assembly resolution 66/138).

[368] A/67/256.

[369] United Nations, *Treaty Series*, vol. 2187, p. 3.

[370] General Assembly resolution 67/152 entitled "Rights of the child and resolution" and resolution 67/167 entitled "Committee on the Rights of the child".

(*h*) Migrants

(i) *Human Rights Council*

The Special Rapporteur on the human rights of migrants, Mr. François Crépeau, submitted his report to the Human Rights Council,[371] which provided a summary of activities undertaken since he took up his functions. The thematic part of the report focused on the detention of migrants in an irregular situation. The first part of the thematic report set out the international and regional human rights legal framework, including with regards to groups of migrants with special protection needs, and the second part focused on alternatives to detention.

On 5 July 2012, the Human Rights Council adopted resolution 20/3 entitled "Human rights of migrants", without a vote. The Council, *inter alia*, reaffirmed the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party. The Council called upon all States to ensure that their immigration policies are consistent with their obligations under international human rights law.

(ii) *General Assembly*

The Special Rapporteur on human rights of migrants submitted his first annual report to the General Assembly.[372] The thematic section of the report was dedicated to the impacts of climate change and some of its consequences for migration and considered how international law approached the matter of climate-induced migration.

On 20 December 2012, the General Assembly adopted resolution 67/172 entitled "Protection of migrants", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, called upon States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability. The Assembly also urged States parties to the United Nations Convention against Transnational Organized Crime, 2000,[373] and the Protocols[374] thereto, to implement them fully, and called upon States that had not done so to consider ratifying or acceding to them as a matter of priority.

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[371] A/HRC/20/24.

[372] A/67/299.

[373] United Nations, *Treaty Series*, vol. 2225, p. 209.

[374] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (United Nations, *Treaty Series*, vol. 2237, p. 319) and Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (*ibid.*, vol. 2241, p. 507).

On the same day, the General Assembly adopted resolution 67/185 entitled "Promoting efforts to eliminate violence against migrants, migrant workers and their families", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, encouraged Member States that had not already done so to enact national legislation and to take other appropriate measures to combat criminal acts of racism, discrimination, xenophobia and related intolerance, including steps to reduce the vulnerability of migrants to crime and to increase their engagement with host societies, consistent with national law.

(*i*) Internally displaced persons

(i) *Human Rights Council*

On 5 July 2012 the Council adopted resolution 20/9 entitled "Human rights of internally displaced persons", without a vote. The Council, *inter alia*, recognized the Guiding Principles on Internal Displacement[375] as an important international framework for the protection of internally displaced persons. It also welcomed the adoption and on-going process of ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009 (Kampala Convention).[376]

(ii) *General Assembly*

The Special Rapporteur on the human rights of internally displaced persons submitted his annual report to the General Assembly.[377] After outlining the major activities undertaken by the mandate holder during the period under review, the report presented a thematic review of the evolution of, and achievements and new challenges and trends relating to, internal displacement over the past two decades, a theme which marked the occasion of the twentieth anniversary of the mandate on the human rights of internally displaced persons.

On 20 December 2012, the General Assembly adopted resolution 67/150 entitled "Assistance to refugees, returnees and displaced persons in Africa" on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, called upon African Member States that had not yet signed or ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009 (Kampala Convention), to consider doing so as early as possible in order to ensure its early entry into force and implementation.

[375] General Assembly resolution 46/182, annex.

[376] Adopted at a Special Summit of the African Union, held in Kampala, Uganda, on 22 October 2009.

[377] A/67/289.

(*j*) Minorities

(i) *Human Rights Council*

The Independent Expert on minority issues, Ms. Rita Izsák, presented her report to the Human Rights Council.[378] The report provided a summary of activities undertaken by the Independent Expert since she took up her functions; a discussion of the Independent Expert's expected priorities for her first term; and a review of the activities of the former Independent Expert. The report also contained an update on the work of the Forum on Minority Issues following its fourth session in November 2011.

(ii) *General Assembly*

The Independent Expert on minority issues presented her report to the General Assembly.[379] The report focused on the value of institutional attention to minority issues within governmental organs, national human rights institutions and other relevant national bodies as a means of promoting minority rights and mainstream attention to minority issues across all relevant bodies. A key recommendation made is that States consider institutional attention to minority rights as an essential component of their human rights, equality and non-discrimination obligations and as a means of implementing practically the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[380]

(k) Indigenous issues

(i) *Human Rights Council*

The Special Rapporteur on the rights of indigenous peoples, Mr. James Anaya, presented his report to the Human Rights Council.[381] In the report, the Special Rapporteur provided a summary of his activities since his previous report to the Council, including his examination of the thematic issue of violence against indigenous women. He then reported on progress in his continuing study of issues relating to extractive industries operating on or near indigenous territories.

On 28 September 2012, the Human Rights Council adopted resolution 21/24 entitled "Human rights and indigenous peoples", without a vote. The Council, *inter alia*, encouraged those States that had not yet ratified or acceded to the Convention concerning Indigenous and Tribal Peoples in independent countries, 1989,[382] to consider doing so and to consider supporting the United Nations Declaration on the Rights of Indigenous Peoples, 2007.[383] The Council called upon States to consider, in consultation and cooperation with indigenous peo-

[378] A/HRC/19/56.

[379] A/67/293.

[380] General Assembly resolution 47/135 of 18 December 1992, annex.

[381] A/HRC/21/47.

[382] International Labour Organization convention No. 169. United Nations, *Treaty Series*, vol. 1650, p. 383.

[383] General Assembly resolution 61/295 of 13 September 2007, annex.

ples, initiating and strengthening, as appropriate, effective legislative and policy measures to protect, promote, respect and, where necessary, revitalize indigenous peoples' languages and culture, taking into account, as appropriate, the study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples.

(ii) *General Assembly*

The Special Rapporteur on the rights of indigenous peoples presented his report to the General Assembly,[384] in which he provided comments on the need to harmonize the myriad activities within the United Nations system which affect indigenous peoples.

On 20 December 2012, the General Assembly adopted resolution 67/153 entitled "Rights of indigenous peoples", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, stressed the importance of promoting and pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples, 2007, and encouraged those States that had not yet ratified or acceded to the Convention concerning Indigenous and Tribal Peoples in independent countries, 1989, to consider doing so.

(1) Terrorism and human rights[385]

(i) *Human Rights Council*

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Ben Emmerson, submitted his report to the Human Rights Council.[386] The Special Rapporteur described the legally binding and internationally recognized human rights of victims of terrorism, and elaborated on the corresponding international obligations of States to secure those rights. He recommended that States move towards enshrining those rights and obligations in a specific international instrument.

On 23 March 2012, the Human Rights Council adopted resolution 19/19 entitled "Protection of human rights and fundamental freedoms while countering terrorism", without a vote. The Council, *inter alia,* called upon States to ensure that any measure taken to counter terrorism complies with international law, in particular international human rights, refugee and humanitarian law It also called upon States, while countering terrorism, to ensure that any person whose human rights or fundamental freedoms have been violated has access to an effective remedy and that victims will receive adequate, effective and prompt reparations where appropriate, including by bringing justice those responsible for such violations.

(ii) *General Assembly*

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism submitted his report to the General Assem-

[384] A/67/301.

[385] For further information on terrorism, see sections 2 (*h*) and 16 (*h*) of this chapter.

[386] A/HRC/20/14.

bly.[387] The Special Rapporteur evaluated the mandate of the Office of the Ombudsperson established by Security Council resolution 1904 (2009) (and amended by resolution 1989 (2011)) and its compatibility with international human rights norms, assessing in particular its impact on the due process deficits inherent in the Council's Al-Qaida sanctions regime. The Special Rapporteur made recommendations for amending the mandate to bring it into full conformity with international human rights norms.

On 14 December 2012, the General Assembly adopted resolution 67/99 entitled "Measures to eliminate international terrorism", on the recommendation of the Sixth Committee, without a vote. The Assembly, *inter alia*, affirmed that States must ensure that any measure taken to combat terrorism complies with all their obligations under international law and must adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law.

(m) Promotion and protection of human rights

(i) *International cooperation and universal instruments*

a. Human Rights Council

On 23 March 2012, the Human Rights Council adopted resolution 19/33 entitled "Enhancement of international cooperation in the field of human rights", without a vote. The Council, *inter alia*, reaffirmed that it was one of the purposes of the United Nations and also the primary responsibility of Member States to promote, protect and encourage respect for human rights and fundamental freedoms through, among other things, international cooperation. The Council recognized that, in addition to their separate responsibilities to their individual societies, States had a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. It affirmed that the enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations, including the effective promotion and protection of all human rights. The Council urged States to take necessary measures to enhance bilateral, regional and international cooperation aimed at addressing the adverse impact of consecutive and compounded global crises, such as financial and economic crises, food crises, climate change and natural disasters, on the full enjoyment of human rights.

On 27 September 2012, the Human Rights Council adopted resolution 21/10 entitled "Human rights and international solidarity", by a recorded vote of 35 in favour to 12 against. The Council, *inter alia*, took note with appreciation of the report of the Independent Expert on human rights and international solidarity[388] and reiterated its request to the Independent Expert to continue her work in the preparation of a draft declaration on the right of peoples and individuals to international solidarity and in further developing guidelines, standards, norms and principles with a view to promoting and protecting this right by addressing, *inter alia*, existing and emerging obstacles to its realization.

[387] A/67/396.

[388] A/HRC/21/44.

b. General Assembly

On 20 December 2012, the General Assembly adopted resolution 67/169 entitled "Enhancement of international cooperation in the field of human rights", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, called on States, specialized agencies and intergovernmental organizations to continue carrying out consultations for the enhancement of understanding and promotion and protection of all human rights and fundamental freedoms. The Secretary-General, along with the United Nations High Commissioner for Human Rights, was requested to consult States and non-governmental organizations on ways to enhance cooperation and dialogue in the United Nations human rights machinery, including the Human Rights Council.

(ii) *Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights*

a. Human Rights Council

On 5 July 2012, the Human Rights Council adopted resolution 20/14 entitled "National institutions for the promotion and protection of human rights", without a vote. The Council, *inter alia*, reaffirmed the importance of the establishment and strengthening of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in accordance with the Paris Principles.[389] It recognized the important role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies.

b. General Assembly

On 20 December 2012, the General Assembly adopted without a vote resolution 67/163 entitled "The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights", on the recommendation of the Third Committee. The Assembly, *inter alia*, encouraged States to consider the creation of such institutions at the national and, where applicable, the local level, and encourage them, where they exist, to operate in accordance with the principles relating to the status of national institutions[390] for the promotion and protection of human rights and other relevant international instruments.

[389] Principles relating to the status of national institutions, General Assembly resolution 48/134 of 20 December 1993.

[390] *Ibid.*

(iii) *Human rights and the right to promote and protect universally recognized human rights*

a. Human Rights Council

The Special Rapporteur on the situation of human rights defenders, Ms. Margaret Sekaggya, submitted her annual report to the Human Rights Council.[391] The Special Rapporteur focused on the specific risks and challenges faced by selected groups of defenders, including journalists and media workers, defenders working on land and environmental issues and youth and student defenders. The Special Rapporteur set out a series of recommendations to ensure the protection of these selected groups of defenders.

On 23 March 2012, the Council adopted resolution 19/20 entitled "The role of good governance in the promotion and protection of human rights," without a vote. The Council, *inter alia*, welcomed the growing trend towards the universal ratification of the United Nations Convention against Corruption, 2003,[392] and encouraged States that have not yet done so to consider ratifying this important instrument.

b. General Assembly

The Special Rapporteur on the situation of human rights defenders submitted her report[393] to the General Assembly, which focused on the use of legislation to regulate the activities of human rights defenders.

On 20 December 2012, the General Assembly adopted resolution 67/166 entitled "Human rights in the administration of justice", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, recalled the absolute prohibition of torture in international law, and called upon States to address and prevent the detention conditions, treatment and punishment of persons deprived of their liberty that amount to cruel, inhuman or degrading treatment or punishment. The Assembly recognized that every child and juvenile in conflict with the law must be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, bearing in mind relevant international standards on human rights in the administration of justice, and called upon States parties to the Convention on the Rights of the Child, 1989,[394] to abide strictly by its principles and provisions.

(n) Persons with disabilities[395]

(i) *Human Rights Council*

On 22 April 2012, the Human Rights Council adopted resolution 19/11 entitled "Rights of persons with disabilities: participation in political and public life", without a vote. The

[391] A/HRC/19/55.

[392] United Nations, *Treaty Series*, vol. 2349, p. 41.

[393] A/67/292.

[394] United Nations, *Treaty Series*, vol. 1577, p. 3.

[395] See also Economic and Council resolution 2012/11 of 26 July 2012 entitled "Mainstreaming disability in the development agenda".

Council, *inter alia*, reaffirmed the right to participate in political and public life, as set out in article 21 of the Universal Declaration of Human Rights, 1948, as well as article 25 of the International Covenant on Civil and Political Rights, 1966, and article 29 of the Convention on the Rights of Persons with Disabilities, 2006.[396] In this context, the Council urged States parties to review any existing exclusion or restriction of political rights for persons with disabilities, including those persons with psychosocial, mental or intellectual disabilities, and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. It also called upon States parties, in adopting and implementing measures to ensure that persons with disabilities have the opportunity to participate effectively and fully in political and public life, including the conduct of public affairs on an equal basis with others, to consult closely with and actively involve persons with disabilities.

(ii) *General Assembly*[397]

On 20 December 2012, the General Assembly adopted resolution 67/160 entitled "Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, called upon those States that have not yet done so to consider signing and ratifying the Convention on the Rights of Persons with Disabilities, 2006, and the Optional Protocol thereto, [398] as a matter of priority.

(o) Contemporary forms of slavery

Human Rights Council

The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Ms. Gulnara Shahinian, presented her report to the Human Rights Council.[399] The Special Rapporteur focused her thematic report on the issue of servile marriage, in which a spouse is reduced to a commodity over whom any or all the powers of ownership are attached.

[396] United Nations, *Treaty Series*, vol. 2515, p. 3.

[397] See also General Assembly resolution 67/140 of 20 December 2012 entitled "Realizing the Millennium Development Goals and other internationally agreed development goals for persons with disabilities towards 2015 and beyond".

[398] A/61/611.

[399] A/HRC/21/41 and Corr.1.

(p) Miscellaneous

(i) *Effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights*

a. Human Rights Council

On 5 July 2012, the Human Rights Council adopted resolution 20/10 entitled "The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights", by a recorded vote of 31 in favour to 11 against, with 5 abstentions. The Council, *inter alia*, welcomed the work and contributions of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, and endorsed the guiding principles on foreign debt and human rights, as annexed to his report.[400] It encouraged all Governments, relevant United Nations agencies, funds and programmes, as well as the private sector, to take into consideration the guiding principles when designing policies and programmes.

b. General Assembly

The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Mr. Cephas Lumina, submitted his report to the General Assembly.[401] The report focused on adverse impacts of the provisions of loans by international financial institutions, involving tight macroeconomic and fiscal policies, cuts in Government expenditure, public sector reform, privatization of public services and trade liberalization. The Independent Experts argues that such policies undermine the obligation of States to protect, promote and fulfill human rights and that women are disproportionately affected. The Independent Expert recommended that States address the disproportionate impact of debt and related policy conditionalities on women by, *inter alia*, fully upholding their obligations relating to women's rights through the adoption of gender-sensitive policies and strategies.

(ii) *Human rights and unilateral coercive measures*

General Assembly

On 20 December 2012, the General Assembly adopted resolution 67/170 entitled "Human rights and unilateral coercive measures", on the recommendation of the Third Committee, by a recorded vote of 128 in favour to 54 against, with 4 abstentions. The Assembly, *inter alia*, stressed that unilateral coercive measures and legislation were contrary to international law, international humanitarian law, the Charter of the United Nations and principles governing peaceful relations among States. The Assembly strongly urged

[400] A/HR/20/23.

[401] A/67/304.

States to refrain from promulgating and applying any unilateral economic, financial or trade measures not in accordance with international law and the Charter.

(iii) *Human rights and environment*[402]

Human Rights Council

On 22 March 2012, the Human Rights Council adopted resolution 19/10 entitled "Human rights and the environment", without a vote. The Council, *inter alia*, reaffirmed the Millennium Development Goals, in particular Goal 7 on ensuring environmental sustainability, as well as the commitments made by the international community, as contained in the outcome document of the High-level Plenary Meeting of the sixty-fifth session of the General Assembly,[403] to make every effort to achieve the Millennium Development Goals. The Council decided to appoint, for a period of three years, an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

(iv) *Business and human rights*

Human Rights Council

The Secretary-General submitted his report entitled "Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights" to the Human Rights Council.[404] The report provided an overview of ongoing activities by entities and mechanisms in the United Nations system relevant to business and human rights. It identified opportunities and provided recommendations for advancing the business and human rights agenda within the United Nations system by embedding the agenda.

On 27 September 2012, the Human Rights Council adopted resolution 21/5 entitled "Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights", without a vote. The Council, *inter alia*, stressed that the obligation and the primary responsibility to promote and protect human rights and fundamental freedoms lie with the State and emphasized that transnational corporations and other business enterprises have a responsibility to respect human rights, irrespective of where they conduct their business. It recognized the importance that guidance, initiatives and practices relevant to the area of business and human rights, at the international, regional and national levels, are guided by the Guiding Principles.[405] The Council therefore recommended that relevant United Nations entities apply the Guiding Principles when formulating and implementing internal policies and procedures, including in investment management, procurement and partnerships with the business sector, taking into account the recommendations made in the report of the Secretary-General.

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[402] For more information on the environment, see section 8 of this chapter.

[403] General Assembly resolution 65/1 of 22 September 2010.

[404] A/HRC/21/21 and Corr. 1.

[405] For the text of the Guiding Principles on Business and Human Rights, see A/HRC/17/31.

6. Women[406]

(*a*) United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)

UN-Women was established by the General Assembly pursuant to resolution 64/289 of 2 July 2010 as a composite entity to function as a secretariat with the additional role of leading, coordinating and promoting the accountability of the United Nations system in its work on gender equality and the empowerment of women.[407]

The Executive Board of UN-Women held three meeting sessions in New York in 2012,[408] during which it adopted ten decisions.[409] One of these decisions is highlighted below.

By its decision 2012/2 of 4 June 2012, entitled "Progress report of the Under-Secretary-General/Executive Director of UN-Women on the implementation of the UN-Women strategic plan, 2011–2013", the Executive Board, *inter alia*, commended UN-Women for leading the development of the United Nations System Wide Action Plan (UN-SWAP) on gender equality and women's empowerment, welcomed its adoption by the United Nations Chief Executives Board as an accountability framework to be applied throughout the United Nations system, called upon UN-Women to continue its effective coordination work and recommended that the Economic and Social Council consider steps to encourage the full application of UN-SWAP.

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[406] This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on the Status of Women. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For more detailed information and documents regarding this topic generally, see the website of the UN-Women at http://www.unwomen.org/. See also section 5 of this chapter on human rights.

[407] It consolidated the mandates and functions of the Office of the Special Adviser on Gender Issues and Advancement of Women, the Division for the Advancement of Women, the United Nations Development Fund for Women and the International Research and Training Institute for the Advancement of Women.

[408] See the reports of the Executive Board of UN-Women: Report of the first regular session, held from 23 to 24 January 2012 (UNW/2012/3); report of the annual session, held from 29 May to 1 June 2012 (UNW/2012/9); and report of the second regular session, held from 28 November to 30 November 2012 (UNW/2012/17).

[409] Decisions 2012/1 entitled "Report on operational activities"; 2012/2 entitled "Progress report of the Under-Secretary-General/Executive Director of UN-Women on the implementation of the UN-Women strategic plan, 2011–2013"; 2012/3 entitled "Proposed revision to the financial regulations and rules for the United Nations Entity for Gender Equality and the Empowerment of Women"; 2012/4 entitled "Report of the Under Secretary-General/Executive Director on the Regional Architecture"; 2012/5 entitled "Annual Report on the United Nations Entity for Gender Equality and the Empowerment of Women Evaluation Function 2011"; 2012/6 entitled "Regional Architecture: administrative, budgetary and financial implications and implementation plan"; 2012/7 entitled "Progress report toward a harmonized cost-recovery policy"; 2012/8 entitled "Proposed approach for calculating the operational reserve for the United Nations Entity for Gender Equality and the Empowerment of Women"; 2012/9 entitled "The Evaluation Policy for the United Nations Entity for Gender Equality and the Empowerment of Women"; and 2012/10 entitled "Report on internal audit and investigation activities for the period 1 July 2010 to 31 December 2011".

(*b*) Commission on the Status of Women

The Commission on the Status of Women was established by the Economic and Social Council in its resolution 11 (II) 21 June 1946 as a functional commission to deal with questions relating to gender equality and the advancement of women. It is the principal global policy-making body in this field and prepares recommendations and reports to the Council on the promotion of women's rights in political, economic, civil, social and educational fields.

The Commission held its fifty-sixth session in New York on 14 March 2011 and from 27 February to 9 March 2012 and on 15 March 2012.[410] In accordance with the multi-year programme of work adopted by the Economic and Social Council,[411] the priority theme of the Commission was "The empowerment of rural women and their role in poverty and hunger eradication, development and current challenges" and progress was evaluated in the implementation of the agreed conclusions from the fifty-second session on "Financing gender equality and the empowerment of women".

During its fifty-sixth session, the Commission adopted five resolutions to be brought to the attention of the Economic and Social Council.[412] Two of these resolutions are highlighted herein.

In resolution 56/1 entitled "Release of women and children taken hostage, including those subsequently imprisoned, in armed conflicts", the Commission, *inter alia*, urged States that are parties to an armed conflict to take all the necessary measures, in a timely manner, to determine the identify, fate and whereabouts of women and children taken hostage, including those subsequently imprisoned, in armed conflicts, and, to the greatest possible extent, to provide their family members, through appropriate channels, with all relevant information they have on their fate and whereabouts. The Commission also strongly urged all parties to armed conflicts to respect fully the norms of international humanitarian law and to take all necessary measures for the protection of the civilian population as such, including measures to prevent and combat acts of hostage-taking.

In resolution 56/3 entitled "Eliminating maternal mortality and morbidity through the empowerment of women", the Commission, *inter alia*, called upon Member States to fully and effectively implement the Beijing Platform for Action,[413] the Programme of Action of the International Conference on Population and Development ("Cairo Programme of Action")[414] and the outcomes of their review conferences, including the com-

[410] Commission on the Status of Women, Report on the fifty-sixth session (14 March 2011, 27 February-9 March and 15 March 2012), Official Records of the Economic and Social Council, 2012 Supplement No. 7 (E/2012/27 and E/CN.6/2012/16).

[411] Economic and Social Council resolution 2009/15 of 28 July 2009.

[412] Resolutions 56/1 entitled "Release of women and children taken hostage, including those subsequently imprisoned, in armed conflicts"; 56/2 entitled "Gender equality and empowerment of women in natural disasters"; 56/3 entitled "Eliminating maternal mortality and morbidity through the empowerment of women"; 56/4 entitled "Indigenous women: key actors in poverty and hunger eradication"; and 56/5 entitled "Women, the girl child and HIV and AIDS".

[413] *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chapter I, resolution 1, annex II.

[414] *Report of the International Conference on Population and Development, Cairo, 5–13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chapter I, resolution 1, annex.

mitments relating to sexual and reproductive health and reproductive rights, and the promotion and protection of all human rights in this context. It also called upon Member States to ensure the right of women and girls to education of good quality and on an equal basis with men and boys, to ensure that they complete a full course of primary education, and to renew their efforts to improve and expand girls' and women's education at all levels, including at the secondary and higher levels, as well as vocational education and technical training, in order to, *inter alia*, achieve gender equality, the empowerment of women and poverty eradication.

(*c*) Economic and Social Council

On 27 July 2012, the Economic and Social Council adopted two resolutions relating to gender equality, gender mainstreaming and empowerment of women.[415] One of these resolutions is highlighted herein.

In resolution 2012/24 entitled "Mainstreaming a gender perspective into all policies and programmes in the United Nations system", the Economic and Social Council, *inter alia*, took note with appreciation of the report of the Secretary-General[416] and the recommendations contained therein, and called for further and continued efforts to mainstream a gender perspective into all policies and programmes of the United Nations in accordance with all relevant resolutions of the Economic and Social Council. It further welcomed the development of the United Nations System-wide Action Plan on Gender Equality and the Empowerment of Women (UN-SWAP), under the leadership of UN-Women, and its adoption by the United Nations System Chief Executives Board for Coordination on 13 April 2012, as an accountability framework to be fully implemented by the United Nations system, and called upon the United Nations system to actively engage in its roll-out.

(*d*) General Assembly

On 20 December 2012, the General Assembly adopted five resolutions relating to women and human rights, without a vote, on the recommendation of the Third Committee.[417] One of which is highlighted herein.

In resolution 67/148 entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly", the General Assembly,

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[415] Economic and Social Council resolutions 2012/24 entitled "Mainstreaming a gender perspective into all polices and programmes in the United Nations system" and 2012/25 entitled "Situation of and assistance to Palestinian women".

[416] E/2012/61.

[417] General Assembly resolutions 67/144 entitled "Intensification of efforts to eliminate all forms of violence against women"; 67/145 entitled "Trafficking in women and girls"; 67/146 entitled "Intensifying global efforts for the elimination of female genital mutilations"; 67/147 entitled "Support efforts to end obstetric fistula"; and 67/148 entitled " Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third session of the General Assembly".

inter alia, took note with appreciation of the report of the Secretary-General[418] under this agenda item. The Assembly called upon States parties to comply fully with their obligations under the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[419] and the Optional Protocol, 1999,[420] thereto and to take into consideration the concluding observations as well as the general recommendations of the Committee on the Elimination of Discrimination against Women. It urged States parties to consider limiting the extent of any reservations that they lodge to the Convention, to formulate any reservations as precisely and narrowly as possible and to regularly review such reservations with a view to withdrawing them so as to ensure that no reservation is incompatible with the object and purpose of the Convention. The Assembly also urged all Member States that had not yet ratified or acceded to the Convention to consider doing so, and called upon those Member States that had not yet done so to consider signing and ratifying or acceding to the Optional Protocol. Moreover, the Assembly reiterated that the full, effective and accelerated implementation of the Beijing Declaration and Platform for Action[421] and the outcome of the twenty-third special session[422] was essential to achieving the internationally agreed development goals, including the Millennium Development Goals, and in this regard called for the goal of gender equality and the empowerment of women to feature prominently in discussions on the post-2015 development framework, bearing in mind the importance of mainstreaming a gender perspective.

7. Humanitarian matters

(*a*) Economic and Social Council

On 20 July 2012, the Economic and Social Council adopted resolution 2012/3 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". The Council, *inter alia,* took note of the report of the Secretary-General submitted under the agenda item.[423] The Council urged Member States to assess their progress in strengthening preparedness levels for humanitarian response, with a view to increasing efforts to develop, update and strengthen disaster preparedness and risk reduction measures at all levels, in accordance with the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters.[424] It also urged all actors engaged in the provision of humanitarian assistance to fully commit to and duly respect the guiding principles contained in the annex to General Assembly resolution 46/182 of 19 December 1991, including the humanitarian principles of humanity, impartiality and neutrality as well as the principle of independence, as recognized by the Assembly in its resolution 58/114 of 17 December 2003. The Council called upon all States and parties to comply fully

[418] A/67/185.

[419] United Nations, *Treaty Series*, vol. 1249, p. 13.

[420] *Ibid*., vol. 2131, p. 83.

[421] *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chapter I, resolution 1, annexes I and II.

[422] Resolution S-23/2, annex, and resolution S-23/3, annex. See also section 2 of this chapter on peace and security.

[423] A/67/89-E/2012/77.

[424] A/CONF.206/6 and Corr.1, chap. I, resolution 2.

with the provisions of international humanitarian law, including all the Geneva Conventions of 12 August 1949,[425] in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War,[426] in order to protect and assist civilians in occupied territories, and in that regard urged the international community and the relevant organizations of the United Nations system to strengthen humanitarian assistance to civilians in those situations. It further urged Member States to continue to prevent, investigate and prosecute acts of sexual and gender-based violence in humanitarian emergencies, called upon Member States and relevant organizations to strengthen support services for victims of such violence, and called for a more effective response in that regard.

(*b*) General Assembly

On 13 December 2012, the General Assembly adopted, without a vote, resolution 67/84, entitled "Participation of volunteers, 'White Helmets', in the activities of the United Nations in the field of humanitarian relief, rehabilitation and technical cooperation for development". The Assembly, *inter alia,* took note of the report of the Secretary-General on the strengthening of the coordination of emergency humanitarian assistance of the United Nations,[427] in particular section VI.B concerning the White Helmets. The Assembly also took note of the agreement signed in 2012 between the United Nations Volunteers and the White Helmets Commission, which would allow the continuation of the joint work launched in 1995.

On the same day, the General Assembly adopted resolution 67/85, entitled "Safety and security of humanitarian personnel and protection of United Nations personnel" without a vote. The Assembly, *inter alia,* welcomed the report of the Secretary-General[428] and strongly urged all States to take the necessary measures to ensure the safety and security of humanitarian personnel and United Nations and associated personnel and to respect and ensure respect for the inviolability of United Nations premises. The Assembly also called upon all States to consider becoming parties to the Rome Statute of the International Criminal Court, 1998,[429] as well as to the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, 2005,[430] and urged States parties to put in place appropriate national legislation, as necessary, to enable its effective implementation. Moreover, the Assembly called upon all States, all parties involved in armed conflict and all humanitarian actors to respect the principles of neutrality, humanity, impartiality and independence for the provision of humanitarian assistance. The Assembly also called upon all States to comply fully with their obligations under international humanitarian law, including as provided by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949,[431] in order to respect and protect civilians, including humanitarian personnel, in territories subject to their jurisdiction. The Assembly request-

[425] United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135 and 287.

[426] *Ibid.*, p. 287.

[427] A/67/89-E/2012/77.

[428] A/67/492.

[429] United Nations, *Treaty Series*, vol. 2187, p. 3.

[430] See General Assembly resolution 60/42 of 8 December 2005.

[431] United Nations, *Treaty Series*, vol. 75, p. 287.

ed the Secretary-General to take the necessary measures to promote full respect for the human rights, privileges and immunities of United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation, and also requested the Secretary-General to seek the inclusion, in negotiations of headquarters and other mission agreements concerning United Nations and associated personnel, of the applicable conditions contained in the Convention on the Privileges and Immunities of the United Nations,[432] the Convention on the Privileges and Immunities of the Specialized Agencies[433] and the Convention on the Safety of United Nations and Associated Personnel.[434] The Assembly also noted with appreciation the progress reported in implementing the recommendations of the Independent Panel on Safety and Security of United Nations Personnel and Premises Worldwide.[435]

On 13 December 2012, the General Assembly also adopted resolution 67/87, entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations", without a vote. The Assembly, *inter alia,* welcomed the outcome of the fifteenth humanitarian affairs segment of the Economic and Social Council at its substantive session of 2012.[436] The Assembly also welcomed the adoption and ongoing process of ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa which marked a significant step towards strengthening the national and regional normative framework for the protection of and assistance to internally displaced persons in Africa. Furthermore, the Assembly reaffirmed the importance of implementing the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters,[437] and reiterated the importance of strengthening the effectiveness of national and local preparedness in line with priority five of the Framework. The Assembly further welcomed the growing number of initiatives undertaken at the regional and national levels to promote the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, adopted at the Thirtieth International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007, and encouraged Member States and, where applicable, regional organizations to take further steps to review and strengthen operational and legal frameworks for international disaster relief, taking into account the Guidelines, as appropriate. Moreover, the Assembly recognized the Guiding Principles on Internal Displacement[438] as an important international framework for the protection of internally displaced persons, encouraged Member States and humanitarian agencies to continue to work together, in collaboration with host communities, in endeavours to provide a more predictable response to the needs of internally displaced persons, and in this regard called for continued and enhanced international support, upon request, for the capacity-building efforts of States.

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[432] *Ibid.*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

[433] *Ibid.*, vol. 33, p. 261.

[434] *Ibid.*, vol. 2051, p. 363.

[435] Available from http://www.un.org/News/dh/infocus/terrorism/PanelOnSafetyReport.pdf.

[436] See *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 3* (A/67/3/Rev.1), chap. VII.

[437] A/CONF.206/6 and Corr.1, chap. I, resolution 2.

[438] E/CN.4/1998/53/Add.2, annex.

On 21 December 2012, the General Assembly adopted resolution 67/231, entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", without a vote. The Assembly, *inter alia*, took note of the report of the Secretary-General submitted under the agenda item.[439] The Assembly further recognized that information and telecommunication technology can play an important role in disaster response and, in this regard, encouraged Member States that have not acceded to or ratified the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations[440] to consider doing so.

8. Environment

(*a*) United Nations Climate Change Conference in Doha

The United Nations Climate Change Conference was held in Doha, Qatar, from 26 November to 8 December 2012. The eighteenth session of the Conference of States Parties to the United Nations Framework Convention on Climate Change, 1992,[441] and the eighth session of the Conference of the Parties serving as the meeting of Parties to the Kyoto Protocol, 1997,[442] were held during the Conference.

The Conference of the State Parties to the United Nations Framework Convention on Climate Change adopted 26 decisions and 1 resolution.[443] Decision 1/CP.18, constituted the agreed outcome pursuant to the Bali Action Plan.[444] By decision 2/CP.18, the Conference welcomed with high appreciation the successful start, as a matter of urgency, of the work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, including the workplan on enhancing mitigation ambition, and the progress that had been made in 2012. In this context, it also determined to adopt a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties at its twenty-first session, due to be held from 2 to 13 December 2015, and for it to come into effect and be implemented from 2020. [445]

The Conference of the Parties serving as the meeting of Parties to the Kyoto Protocol adopted 13 decisions and 1 resolution.[446] By decision 1/CMP.8, the Conference adopted, in accordance with articles 20 and 21 of the Kyoto Protocol, an amendment to the Protocol (Doha Amendment to the Kyoto Protocol), the text of which is set out in annex I to the decision.[447]

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[439] A/67/363.

[440] United Nations, *Treaty Series*, vol. 2296, p. 5.

[441] *Ibid.,* vol. 1771, p. 107.

[442] *Ibid.,* vol. 2303, p. 148.

[443] For the report of the Conference of the Parties, see FCCC/CP/2012/8 and Add.1 to 3.

[444] *Ibid.*, Add.1, p. 3.

[445] *Ibid.*, p. 19.

[446] For the report of the Conference of the Parties, see FCCC/KP/CMP/2012/13 and Add.1 and 2.

[447] *Ibid.*, Add.1, p. 2.

(*b*) United Nations Conference on Sustainable Development

The United Nations Conference on Sustainable Development was held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, pursuant to General Assembly resolutions 64/236 of 24 December 2009 and 66/197 of 22 December 2011. During that period, the Conference held six plenary meetings and adopted three resolutions.[448]

At the 6th plenary meeting, on 22 June 2012, the Conference adopted its outcome document entitled "The future we want", as an annex to resolution 1, and recommended to the General Assembly that it endorse the outcome document as adopted by the Conference.

(*c*) General Assembly

On 27 July 2012, the General Assembly, without reference to a Main Committee, adopted resolution 66/288, entitled "The future we want" without a vote, in which it endorsed the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", annexed to the resolution.

On 21 December 2012, the General Assembly adopted, on the recommendation of the Second Committee, 17 resolutions related to the environment.[449] Four of these resolutions are highlighted below.

By resolution 67/203, entitled "Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development and of the United Nations Conference on Sustainable Development", adopted without a vote, the General Assembly reaffirmed, *inter alia,* the outcome document of the United Nations Conference on Sustainable Development, entitled "The future

[448] For the report of the United Nations Conference on Sustainable Development, see A/CONF.216/16.

[449] General Assembly resolutions: 67/200, entitled "International Day of Forests"; 67/201, entitled "Oil slick on Lebanese shores"; 67/203, entitled "Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development and of the United Nations Conference on Sustainable Development"; 67/204, entitled "Implementation of the International Year of Water Cooperation, 2013"; 67/205, entitled "Towards the sustainable development of the Caribbean Sea for present and future generations"; 67/206, entitled "International Year of Small Island Developing States"; 67/207, entitled "Follow-up to and implementation of the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States"; 67/208, entitled "International cooperation to reduce the impact of the El Niño phenomenon"; 67/209, entitled "International Strategy for Disaster Reduction"; 67/210, entitled "Protection of global climate for present and future generations of humankind"; 67/211, entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa"; 67/212, entitled "Implementation of the Convention on Biological Diversity and its contribution to sustainable development"; 67/213, entitled "Report of the Governing Council of the United Nations Environment Programme on its twelfth special session and on the implementation of section IV.C, entitled 'Environmental pillar in the context of sustainable development', of the outcome document of the United Nations Conference on Sustainable Development"; 67/214, entitled "Harmony with Nature"; 67/215, entitled "Promotion of new and renewable sources of energy"; 67/216, entitled "Implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II) and strengthening of the United Nations Human Settlements Programme (UN-Habitat)"; and 67/223, entitled "Promotion of ecotourism for poverty eradication and environment protection".

we want",[450] and urged its speedy implementation. The Assembly also recalled the commitment made at the United Nations Conference on Sustainable Development to strengthen the Economic and Social Council within its mandate under the Charter of the United Nations as a principal organ in the integrated and coordinated follow-up of the outcomes of all major United Nations conferences and summits in the economic, social, environmental and related fields.

By resolution 67/210, entitled "Protection of global climate for present and future generations of humankind", adopted without a vote, the General Assembly took note, *inter alia,* with appreciation of the outcome of the seventeenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change and of the seventh session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, hosted in Durban, South Africa, from 28 November to 11 December 2011.[451] The Assembly also encouraged Member States to approach the United Nations Climate Change Conference in Doha with a view to achieving an ambitious, substantive and balanced outcome, building on the progress made through the Bali Action Plan[452] and the decisions adopted at Cancun, Mexico,[453] and Durban, South Africa, accelerating progress towards the full implementation of those decisions through the ongoing negotiations at the Conference of the Parties to the Convention and the Meeting of the Parties to the Kyoto Protocol, consistent with the mandates of and decisions on the three tracks of negotiations, and further developing and implementing the new processes and institutions agreed in the Cancun and Durban decisions.

By resolution 67/212, entitled "Implementation of the Convention on Biological Diversity and its contribution to sustainable development", adopted without a vote, the General Assembly took note, *inter alia,* of the report of the Executive Secretary of the Convention on Biological Diversity on the work of the Conference of the Parties to the Convention.[454] The Assembly also encouraged parties, in close collaboration with relevant stakeholders, to take concrete measures towards achieving the objectives of the Convention on Biological Diversity, 1992,[455] and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization, 2010.[456] It requested parties, in close collaboration with relevant stakeholders, to coherently and efficiently implement their obligations and commitments under the Convention, and in this regard emphasized the need to comprehensively address at all levels the difficulties that impede the full implementation of the Convention. The Assembly further invited countries that have not yet done so to ratify or accede to the Convention on Biological Diversity, and invited parties to the Convention to ratify or accede to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization, so as to ensure its early entry into force and its implementation.

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[450] General Assembly resolution 66/288, annex.

[451] FCCC/CP/2011/9/Add.1 and 2 and FCCC/KP/CMP/2011/10/Add.1 and 2.

[452] FCCC/CP/2007/6/Add.1, decision 1/CP.13.

[453] FCCC/CP/2010/7/Add.1 and 2.

[454] A/67/295, sect. III.

[455] United Nations, *Treaty Series*, vol. 1760, p. 79.

[456] UNEP/CBD/COP/10/27, annex, decision X/1.

By resolution 67/213, entitled "Report of the Governing Council of the United Nations Environment Programme on its twelfth special session and on the implementation of section IV.C, entitled 'Environmental pillar in the context of sustainable development', of the outcome document of the United Nations Conference on Sustainable Development", adopted without a vote, the General Assembly decided, *inter alia,* to strengthen and upgrade the United Nations Environment Programme in the manner set out in subparagraphs (a) to (h) of paragraph 88 of the outcome document, entitled "The future we want", of the United Nations Conference on Sustainable Development, as endorsed by the General Assembly in its resolution 66/288 of 27 July 2012.

9. Law of the Sea

(*a*) Reports of the Secretary-General

Pursuant to paragraph 249 of General Assembly resolution 66/231 of 24 December 2011, the Secretary-General submitted a comprehensive report on oceans and the law of the sea[457] to the General Assembly at its sixty-seventh session under the agenda item entitled "Oceans and the law of the sea". The report was also submitted to States parties to the United Nations Convention on the Law of the Sea, 1982 (the "Convention")[458] in accordance with article 319 thereof. The report consisted of two parts.

The first part of the report[459] was prepared to facilitate discussions on the topic of focus of the thirteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, namely marine renewable energies. It contained information on the various marine sources of renewable energies and the policy framework and legal aspects of the activities relating to them. In addition, this part of the report attempted to identify developments at the global and regional levels, as well as the related opportunities and challenges within the context of sustainable development.

The second part of the report[460] provided an overview of developments relating to the implementation of the Convention and the work of the Organization, its specialized agencies and other institutions in the field of ocean affairs and the law of the sea. It outlined the work carried out in 2012 by the three bodies established by the Convention, namely the Commission on the Limits of the Continental Shelf (CLCS),[461] the International Seabed Authority (ISA),[462] and the International Tribunal for the Law of the Sea (ITLOS).[463]

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[457] A/67/79 and Corr. 1, and Add.1 and 2. At the time of preparation of this chapter, the Secretary-General's report to the sixty-eight session of the General Assembly was not published yet. It will contain further details on activities carried out in 2012. Therefore, for activities that have taken place in 2012 after the publication of A/67/79/Add.1 and 2 references have been made to United Nations documents other than the report of the Secretary-General, wherever possible.

[458] United Nations, *Treaty Series*, vol. 1833, p. 3.

[459] A/67/79 and Corr.1.

[460] A/67/79/Add.1 and 2.

[461] *Ibid*., chapter III.A. For more information on the twenty-ninth (19 March-27 April 2012), and thirtieth (30 July-24 August 2012) sessions of the CLCS, see CLCS/74 and CLCS/76.

[462] *Ibid*., chapter III.B.

[463] *Ibid*., chapter IV.C. For the work of the Tribunal, see section B of chapter VII of this publication.

In that part of the report, the Secretary-General provided an overview of legal developments relating to piracy and armed robbery at sea worldwide as well as actions being taken by various actors to combat these crimes.[464] The report also referred to a number of other documents published in 2012 specifically addressing piracy and armed robbery at sea, including: a report of the United Nations assessment mission on piracy in the Gulf of Guinea issued by the Secretary-General in January 2012;[465] the report of the Secretary-General on specialized anti-piracy courts in Somalia and other States in the region issued in January 2012;[466] and a compilation of information received from 42 States on measures taken to criminalize piracy under their domestic law and to support the prosecution of individuals suspected of piracy off the coast of Somalia and the imprisonment of convicted pirates submitted to the Security Council in March 2012.[467]

It also noted that the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction held its fifth meeting from 7 to 11 May 2012. It was the first meeting of the Working Group within the process initiated by the General Assembly in resolution 66/231, with a view to ensuring that the legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction effectively addresses those issues by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under the Convention. The Working Group formulated recommendations for consideration by the General Assembly at its sixty-seventh session.[468]

The second part of the report[469] further observed that the thirteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea was held in New York from 29 May to 1 June 2012, and focused its discussions on marine renewable energies.[470] It reported that the General Assembly was expected to further review the effectiveness and utility of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea, at its sixty-seventh session, in accordance with paragraph 230 of resolution 66/231.[471]

In relation to the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (the "Regular Process"), the

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[464] A/67/79/Add.1, chapter VII.

[465] S/2012/45.

[466] S/2012/50, issued pursuant to Security Council resolution 2015 (2011) of 24 October 2011.

[467] S/2012/177, prepared in response to the request of the Security Council contained in resolution 2015 (2011). Following the publication of the Secretary-General's report A/67/79/Add.1, pursuant to Security Council resolution 2020 (2011) of 22 November 2011 an overview of measures being taken to combat piracy off the coast of Somalia between October 2011 and 2012 was provided in the report of the Secretary-General issued in October 2012 (S/2012/783). See also, with regard to actions of the Security Council against piracy, section 2 (*i*) above.

[468] A/67/95.

[469] A/67/79/Add.1, chapter XVI.A.

[470] A/67/120. The Co-Chairs' summary of discussions at the meeting was circulated as a document of the sixty-seventh session of the General Assembly under the agenda item "Oceans and the law of the sea".

[471] A/67/79/Add.1, chapter XVI.A.

second part of the report of the Secretary-General noted the work of the Ad Hoc Working Group of the Whole of the General Assembly, which held its third meeting from 23 to 27 April 2012, and provided recommendations to the General Assembly.[472] This part of the report also commented on the progress in the work of the Bureau of the Ad Hoc Working Group of the Whole, the convening of workshops in support of the first cycle of the Regular Process and the appointment of individuals to the Pool of Experts of the Regular Process. In addition, it noted the support expressed for the Regular Process by the United Nations Conference on Sustainable Development.[473]

The Secretary-General also reported that on 12 August 2012, at the International Conference Commemorating the thirtieth anniversary of the Opening for Signature of the Convention, organized at the Yeosu World Expo, Republic of Korea, he launched the Oceans Compact, an initiative aimed at strengthening United Nations system-wide coherence and fostering synergies in oceans matters towards achieving the common goal of "healthy oceans for prosperity".[474] The Compact has three inter-related objectives: protecting people and improving the health of the oceans; protecting, recovering and sustaining the environment and natural resources of the oceans and restoring their full food production and livelihood services; and strengthening ocean knowledge and the management of oceans. The Compact will, among other things, assist Member States to implement the Convention and other relevant global and regional conventions and instruments, and promote participation in those instruments.

The Secretary-General's report also provided an overview with regard to a number of other oceans-related issues, including updates on the status of the Convention and its implementing agreements, as well as on declarations and statements made by States under articles 287, 298 and 310 of the Convention;[475] State practice, maritime claims and delimitation of maritime zones;[476] international shipping activities;[477] people at sea;[478] maritime security;[479] marine science and technology;[480] conservation and management of marine liv-

[472] A/67/79/Add.1, chapter XVI.B. See also the report on the work of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (A/67/87).

[473] A/67/79/Add.1, chapter XVI.B.

[474] The text of the Compact is available from http://www.un.org/Depts/los/ocean_compact/oceans_compact.htm.

[475] A/67/79/Add.1, chapter II, and A/67/79/Add.2.

[476] *Ibid*, chapter IV.

[477] *Ibid*., chapter V; see also: section 6 of chapter III.B of this publication regarding the work of the International Maritime Organization.

[478] *Ibid*., chapter VI; see also: section 12 of this chapter regarding the activities of the United Nations High Commissioner for Refugees, section 1 of chapter III.B regarding the work of the International Labour Organization, and section 6 of chapter III.B regarding the work of the International Maritime Organization.

[479] *Ibid*., chapter VII.

[480] *Ibid*., chapter VIII.

ing resources;[481] marine biological diversity;[482] protection and preservation of the marine environment and sustainable development;[483] regional cooperation;[484] small island developing States;[485] climate change and oceans;[486] settlement of disputes;[487] international cooperation and coordination[488]; and capacity-building activities of the United Nations Division for Ocean Affairs and the Law of the Sea.[489]

The Secretary-General also submitted a report to the General Assembly at its sixty-seventh session on sustainable fisheries, including through the 1995 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 related instruments.[490] This report contained information on actions taken by the international community to implement the provisions of General Assembly resolution 66/68 of 6 December 2011. In particular, it highlighted actions relating to achieving sustainable fisheries,[491] implementation of international instruments for the conservation and sustainable use of fishery resources,[492] promoting responsible fisheries in the marine ecosystem,[493] addressing unsustainable fishing practices,[494] and international cooperation to promote sustainable fisheries.[495]

(*b*) Meeting of States Parties to the Convention

The twenty-second Meeting of States Parties to the United Nations Convention on the Law of the Sea[496] took note of a number of reports relating to the ITLOS as well as of the information reported on the ISA and on the CLCS. The Meeting also elected 20 members of the CLCS for a term of office commencing from 16 June 2012 and ending on 15 June 2017.[497] The remaining member was elected on 19 December 2012 during a Special Meeting of the States Parties to the Convention.[498]

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[481] *Ibid.*, chapter IX.

[482] *Ibid.*, chapter X; see also: section 2 of chapter III.B regarding the work of the Food and Agriculture Organization of the United Nations, section 9 of chapter III.B regarding the work of the World Intellectual Property Organization, and section 8 of the present chapter regarding the Environment.

[483] *Ibid.*, chapter XI; see also: section 8 of the present chapter regarding the Environment.

[484] *Ibid.*, chapter XII.

[485] *Ibid.*, chapter XIII.

[486] *Ibid.*, chapter XIV; see also: section 8 of the present chapter regarding the Environment.

[487] *Ibid.*, chapter XV.

[488] *Ibid.*, chapter XVI.

[489] *Ibid.*, chapter XVII.

[490] A/67/315.

[491] *Ibid.*, chapter II.

[492] *Ibid.*, chapter III.

[493] *Ibid.*, chapter IV.

[494] *Ibid.*, chapter V.

[495] *Ibid.*, chapter VI.

[496] SPLOS/251.

[497] For more information on the election see *ibid.*, section VI.B.

[498] SPLOS/255.

(*c*) Commemoration of thirtieth anniversary of the Convention

On 12 June 2012, the twenty-second Meeting of States Parties to the United Nations Convention on the Law of the Sea adopted the Declaration on the thirtieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea.[499]

On 14 November 2012, the General Assembly adopted, without a vote and without reference to a Main Committee, resolution 67/5 entitled "Plenary meetings of the General Assembly on 10 and 11 December 2012 devoted to the consideration of the item entitled 'Oceans and the law of the sea' and to the commemoration of the thirtieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea". On 10 and 11 December 2012, meetings were held in the commemorative segment of the General Assembly plenary in accordance with the format set-up in the resolution.

(*d*) Consideration by the General Assembly

(i) *Oceans and law of the sea*

The General Assembly considered the agenda item entitled "Oceans and the law of the sea" on 11 December 2012, having before it the following documents: the report of the Secretary-General;[500] the recommendations of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;[501] and the reports on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its thirteenth meeting,[502] on the twenty-second Meeting of States Parties to the Convention,[503] and on the work of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-economic Aspects.[504]

On the same date, the General Assembly, without reference to a Main Committee, adopted resolution 67/78 entitled "Oceans and the law of the sea", with a recorded vote of 125 votes in favour, one against and four abstentions. The resolution covers a wide range of ocean issues, such as the implementation of the Convention and related agreements and instruments; capacity-building; the Meeting of States Parties; commemoration of the thirtieth anniversary of the opening for signature of the Convention; peaceful settlement of disputes; the area; effective functioning of the ISA and ITLOS; the continental shelf and the work as well the workload of the CLCS; maritime safety and security and flag State implementation; marine environment and marine resources; marine biodiversity; marine science; the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects; regional cooperation; the open-ended informal consultative

[499] SPLOS/249.

[500] A/67/79 and Corr.1 and Add.1 and 2.

[501] A/67/95, annex, section I.

[502] A/67/120.

[503] SPLOS/251.

[504] A/67/87.

process on oceans and the law of the sea; coordination and cooperation; and the activities of the United Nations Division for Ocean Affairs and the Law of the Sea.

(ii) *Sustainable fisheries*

At its meeting on 11 December 2012, the General Assembly also considered the agenda item "Oceans and the law of the sea: sustainable fisheries, including through the 1995 Agreement for the Implementations 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 related instruments". It had before it the report of the Secretary-General on sustainable fisheries, including through the 1995 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 related instruments.[505] On the same day, the General Assembly, without reference to a Main Committee, adopted resolution 67/79 entitled "Sustainable fisheries, including through the 1995 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 related instruments" without a vote.

The resolution is divided into 14 chapters and addresses a number of issues, including: achieving sustainable fisheries; implementation of the 1995 United Nations Fish Stocks Agreement and related fisheries instruments; illegal, unreported and unregulated fishing; monitoring, control and surveillance and compliance and enforcement; fishing overcapacity; large-scale pelagic drift-net fishing; fisheries by-catch and discards; subregional and regional cooperation; responsible fisheries in the marine ecosystem; capacity-building; cooperation within the United Nations system; and activities of the United Nations Division for Ocean Affairs and the Law of the Sea.

10. Crime prevention and criminal justice[506]

(*a*) Conference of the Parties to the United Nations Convention against Transnational Organized Crime

The sixth session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime was held in Vienna from 15 to 19 October 2012.[507] During this session, four resolutions and three decisions were adopted relating to the implementation of the Convention against Transnational Organized Crime, 2000,[508]

[505] A/67/315.

[506] This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Crime Prevention and Criminal Justice. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For more detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at http://www.unodc.org.

[507] For the report of the Conference, see CTOC/COP/2012/15.

[508] United Nations, *Treaty Series,* vol. 2225, p. 209.

and the Protocols thereto,[509] the implementation of the provisions concerning technical assistance of the Convention, and organizational issues concerning the seventh session of the Conference of the Parties, as well as future sessions.

(*b*) Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council in its resolution 1992/1 of 6 February 1992 as a functional commission to deal with a broad scope of policy matters in this field, including combating national and transnational crime, covering organized crime, economic crime and money laundering; promoting the role of criminal law in environmental protection, crime prevention in urban areas, including juvenile crime and violence; and improving the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each of its annual sessions. The Commission also provides substantive and organizational direction for the quinquennial United Nations Congress on Crime Prevention and Criminal Justice.

The regular and reconvened twenty-first session of the Commission on Crime Prevention and Criminal Justice was held in Vienna from 23 to 27 April 2012 and from 6 to 7 December 2012, respectively. According to Economic and Social Council decision 2011/257 of 28 July 2011, the prominent theme for the twenty-first session of the Commission was "Violence against migrants, migrant workers and their families".

In its annual report,[510] the Commission brought to the attention of the Economic and Social Council the following resolutions: resolution 21/1 entitled "Strengthening Government oversight of civilian private security services and the contribution of such services to crime prevention and community safety"; resolution 21/2 entitled "Countering maritime piracy, especially off the coast of Somalia and in the Gulf of Guinea"; and resolution 21/3 entitled "Strengthening international cooperation to address the links that in some cases may exist between transnational organized criminal activities and terrorist activities".

In resolution 21/1, the Commission took note of the draft preliminary recommendations of the Expert Group on Civilian Private Security Services on oversight and regulation of civilian private security services and on the contribution of such security services to crime prevention and community safety (Abu Dhabi draft preliminary recommendations),[511] and requested that they be circulated to all Member States for their response.

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[509] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (*ibid.*, vol. 2237, p. 319), Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000 (*ibid.*, vol. 2241, p. 507) and Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, 2001 (*ibid.*, vol. 2326, p. 208).

[510] Official records of the Economic and Social Council 2012, Supplement No. 10 (E/2012/30—E/CN.15/2012/24) and *ibid.*, Supplement No. 10A (E/2012/30/Add.1—E/CN.15/2012/24/Add.1). The Commission on Crime Prevention and Criminal Justice also submitted in its report a number of draft resolutions that were to be recommended by the Economic and Social Council for adoption by the General Assembly, and several draft resolutions and decisions for adoption by the Economic and Social Council.

[511] E/CN.15/2012/20.

In resolution 21/2, the Commission noted, *inter alia*, the mandated role of the United Nations Office on Drugs and Crime (UNODC) to assist Member States in countering maritime piracy off the coast of Somalia.[512] The Commission requested the UNODC, in cooperation with the United Nations Development Programme and other international partners, as appropriate, to further their efforts to support the development of domestic legislation, agreements and mechanisms that would allow the effective prosecution of suspected pirates and the transfer and imprisonment of convicted pirates. The Commission also encouraged Member States to continue cooperating with each other, using relevant and applicable bilateral or multilateral instruments for law enforcement cooperation, mutual legal assistance and extradition, *inter alia*, the United Nations Convention against Transnational Organized Crime, and the Protocols thereto, and the United Nations Convention against Corruption, 2003.[513]

In resolution 21/3, the Commission, *inter alia*, called upon States to strengthen international cooperation in order to address the serious challenges presented by various forms and manifestations of transnational organized crime, including drug trafficking and the illicit production of narcotic drugs, money-laundering and terrorist activities, and the links that in some cases may exist between them. The Commission further encouraged States parties to the United Nations Convention against Transnational Organized Crime, 2000, the Single Convention on Narcotic Drugs, 1961,[514] as amended by the 1972 Protocol,[515] the Convention on Psychotropic Substances, 1971,[516] the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,[517] and relevant international conventions and protocols related to terrorism, including the International Convention for the Suppression of the Financing of Terrorism, 1999,[518] to utilize the significant potential of those international legal instruments, with a view to strengthening international cooperation, including mutual legal assistance and extradition, where applicable, aimed at tackling transnational organized crime and in some cases its links with terrorist activities and drug trafficking.

(*c*) Economic and Social Council

On 26 July 2012, the Economic and Social Council adopted resolution 2012/12 entitled "Strategy for the period 2012–2015 for the United Nations Office on Drugs and Crime",[519] on the recommendation of the Commission on Narcotic and Drugs and the Commission on Crime Prevention and Criminal Justice. On the same day, the Council also adopted resolutions 2012/18 entitled "Improving the quality and availability of statistics on crime

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[512] In pursuance of Security Council resolutions 1918 (2010), 1950 (2010), 1976 (2011), 2015 (2011), 2020 (2011) and 2036 (2012).

[513] United Nations, *Treaty Series,* vol. 2349, p. 41.

[514] *Ibid.,* vol. 520, p. 151.

[515] *Ibid.,* vol. 976, p. 3.

[516] *Ibid.,* vol. 1019, p. 175.

[517] *Ibid.,* vol. 1582, p. 95

[518] *Ibid.,* vol. 2178, p. 197.

[519] See also, with regard to resolution 2012/12, section 11 of this chapter, on international drug control.

and criminal justice for policy development" and resolution 2012/19, entitled "Strengthening international cooperation in combating transnational organized crime in all its forms and manifestations", on the recommendation of the Commission on Crime Prevention and Criminal Justice.

On the same day, also on the recommendation of the Commission on Crime Prevention and Criminal Justice, the Economic and Social Council adopted the following draft resolutions, recommending their adoption by the General Assembly: 2012/13 entitled "Standard Minimum Rules for the Treatment of Prisoners"; 2012/14 entitled "Strengthening the rule of law and the reform of criminal justice institutions, particularly in the areas related to the United Nations system-wide approach to fighting transnational organized crime and drug trafficking"; 2012/15 entitled "United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems"; 2012/16 entitled "Promoting efforts to eliminate violence against migrants, migrant workers and their families"; and 2012/17 entitled "Follow-up to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice".

(*d*) General Assembly

On 20 December 2012, the General Assembly adopted, on the recommendation of the Third Committee,[520] nine resolutions under the agenda item entitled "Crime prevention and criminal justice", of which three are highlighted below.[521]

In resolution 67/185 entitled "Promoting efforts to eliminate violence against migrants, migrant workers and their families", adopted without a vote, the General Assembly, *inter alia*, encouraged Member States that had not already done so to enact national legislation and take other appropriate measures to combat international smuggling of migrants, including legislative, judicial, regulatory and administrative measures, recognizing that crimes against migrants may endanger the lives of migrants or make them vulnerable to trafficking, kidnapping or other crimes and abuse by organized criminal groups, and to strengthen international cooperation to combat such crimes. The Assembly reiterated its call for those Member States that had not yet done so to consider acceding to the United Nations Convention against Transnational Organized Crime, 2000, and the Protocols thereto, and called upon States parties to fully implement them. It further called upon Member States to institute measures, as appropriate, to strengthen the entire crimi-

[520] For the report of the Third Committee, see A/67/458.

[521] The General Assembly also adopted resolutions: 67/184 entitled "Follow-up to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice"; 67/186 entitled "Strengthening the rule of law and the reform of criminal justice institutions, particularly in the areas related to the United Nations system-wide approach to fighting transnational organized crime and drug trafficking"; 67/188 entitled "Standard Minimum Rules for the Treatment of Prisoners"; 67/190 entitled "Improving the coordination of efforts against trafficking in persons"; 67/191 entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders"; and 67/192 entitled "Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption".

nal justice process and to vigorously investigate and prosecute crimes against migrants, including trafficking in persons and other serious offences, especially crimes constituting violations of the human rights of migrants, giving special attention to assisting and protecting victims, in particular women and children.

In resolution 67/187 entitled "United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems", adopted without a vote, the General Assembly adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the resolution, as a useful framework to guide Member States on the principles on which a legal aid system in criminal justice should be based, taking into account the content of the resolution and the fact that all elements of the annex would be applied in accordance with national legislation.

In resolution 67/189 entitled "Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity", adopted without a vote, the General Assembly, *inter alia*, took note with appreciation of the report of the Secretary-General prepared pursuant to resolution 66/181.[522] It reaffirmed that the United Nations Convention against Transnational Organized Crime and the Protocols thereto represent the most important tools of the international community to fight transnational organized crime and underlined the need for the urgent adoption of the mechanism to review the implementation of these instruments. The Assembly also noted with appreciation the work of the open-ended intergovernmental expert group to conduct a comprehensive study of the problem of cybercrime, and responses to it by Member States, the international community and the private sector, with a view to examining options to strengthen existing and to propose new national and international, legal or other responses to cybercrime. In this regard, it encouraged the expert group to enhance its efforts to complete its work and to present the outcome of the study to the Commission on Crime Prevention and Criminal Justice in due course. The Assembly further welcomed the report of the Working Group on the Smuggling of Migrants,[523] and encouraged States parties to implement the recommendations contained therein.

11. International drug control

(*a*) Commission on Narcotic Drugs

The Commission on Narcotic Drugs was established by the Economic and Social Council in its resolution 9 (I) of 16 February 1946 as a functional commission and as the central policy-making body within the United Nations system dealing with drug-related matters. Pursuant to Economic and Social Council resolution 1999/30 of 28 July 1999, the Commission's agenda is structured in two distinct segments: one relating to its normative functions and one to its role as governing body of the United Nations International Drug Control Programme. The Commission convenes ministerial-level segments of its sessions to focus on specific themes.

[522] A/67/156.

[523] CTOC/COP/WG.7/2012/6.

During its fifty-fifth regular and reconvened session,[524] held in Vienna from 12 to 16 March and from 6 to 7 December 2012, respectively, the Commission adopted twelve resolutions,[525] which were brought to the attention of the Economic and Social Council. Two of those resolutions are highlighted below.

In resolution 55/1 entitled "Promoting international cooperation in responding to the challenges posed by new psychoactive substances", the Commission, *inter alia*, encouraged Member States to consider a wide variety of responses, such as temporary and emergency drug control measures in response to an imminent threat to public health, the use of consumer protection, medicines legislation and hazardous substances legislation, and, where appropriate, to consider criminal justice measures aimed at preventing the illicit manufacture of and trafficking in new psychoactive substances. It further urged Member States, based on the principle of common and shared responsibility, to further cooperate, in accordance with national law, in judicial and law enforcement activities to tackle the trade in and distribution and manufacture of those new psychoactive substances that have already been identified as posing risks to public health and that are subject to control within certain Member States.

In resolution 55/3 entitled "One hundredth anniversary of the International Opium Convention", the Commission, *inter alia*, noted that as follow-up to the International Opium Commission, the first-ever multilateral drug control convention, the International Opium Convention signed at The Hague on 23 January 1912,[526] formed the basis for the development of the international drug control system. The Commission reaffirmed its unwavering commitment to ensure that all aspects of demand reduction, supply reduction and international cooperation are addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights[527] and, in particular, with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States, all human rights, fundamental freedoms, the inherent dignity of all individuals and the principles of equal rights and mutual respect among States. It also affirmed that the three international drug control conventions[528] seek to achieve a balance between ensuring the availability of narcotic drugs and psychotropic substances under international control for medical and scientific purposes and preventing their diversion and abuse.

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[524] For the report of the fifty-fifth session of the Commission on Narcotic Drugs, see *Official Records of the Economic and Social Council, 2012, Supplement No. 8* (E/2012/28—E/CN.7/2012/18) and *ibid., Supplement No. 8A* (E/2012/28/Add.1—E/CN.7/2012/18/Add.1).

[525] For a complete list of the resolutions, see the report of the fifty-fifth session of the Commission on Narcotic Drugs.

[526] League of Nations, *Treaty Series*, vol. VIII, p. 187.

[527] General Assembly resolution 217 A (III).

[528] Single Convention on Narcotic Drugs, 1961 (United Nations, *Treaty Series*, vol. 520, p. 151), as amended by the 1972 Protocol (*ibid*., vol. 976, p. 3), Convention on Psychotropic Substances, 1971 (*ibid*., vol. 1019, p. 175), and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (*ibid*., vol. 1582, p. 95).

(*b*) Economic and Social Council

On 26 July 2012, the Economic and Social Council, adopted resolution 2012/12, entitled "Strategy for the period 2012–2015 for the United Nations Office on Drugs and Crime", on the recommendation of the Commission on Narcotic and Drugs and the Commission on Crime Prevention and Criminal Justice,[529] in which it approved the Strategy for the United Nations Office on Drugs and Crime.[530]

(*c*) General Assembly

On 20 December 2012, the General Assembly adopted, without a vote, resolution 67/193 entitled "International cooperation against the world drug problem" on the recommendation of the Third Committee.[531] In the said resolution, the Assembly reaffirmed that countering the world drug problem is a common and shared responsibility that must be addressed in a multilateral setting, that it requires an integrated and balanced approach and that it must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action[532] on human rights and, in particular, with full respect for the sovereignty and territorial integrity of States, for the principle of non-intervention in the internal affairs of States and for all human rights and fundamental freedoms, and on the basis of the principles of equal rights and mutual respect. Furthermore, the Assembly recognized that crop control strategies should be in full conformity with article 14 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,[533] and appropriately coordinated and phased in accordance with national policies in order to achieve the sustainable eradication of illicit crops. The Assembly also urged Member States to intensify their cooperation with and assistance to transit States affected by illicit drug trafficking, directly or through the competent regional and international organizations, in accordance with article 10 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, and on the basis of the principle of shared responsibility and the need for all States to promote and implement measures to counter the drug problem in all its aspects with an integrated and balanced approach. The Assembly also urged States that had not done so to consider ratifying or acceding to, and States parties to implement, as a matter of priority, all the provisions of the Single Convention on Narcotic Drugs, 1961,[534] as amended by the 1972 Protocol,[535] the Convention on Psychotropic Substances, 1971,[536] the United Nations Convention against Illicit Traffic in Narcotic Drugs

[529] See also, with regard to resolution 2012/12, section 10 on Crime prevention and criminal justice.

[530] E/CN.7/2011/9/Add.2—E/CN.15/2011/9/Add.2.

[531] On 20 December 2012, the General Assembly also adopted resolution 67/186 set out in section 10 on Crime prevention and criminal justice.

[532] *Report of the World Conference on Human Rights, Vienna, 14–25 June 1993* (A/CONF.157/23).

[533] United Nations, *Treaty Series*, vol. 1582, p. 95.

[534] *Ibid.*, vol. 520, p. 151.

[535] *Ibid.*, vol. 976, p. 3.

[536] *Ibid.*, vol. 1019, p. 175.

and Psychotropic Substances, 1988, the United Nations Convention against Transnational Organized Crime, 2000,[537] and the Protocols thereto,[538] and the United Nations Convention against Corruption, 2003.[539] The Assembly further decided to convene, early in 2016, a special session of the General Assembly on the world drug problem, following the high-level review of the progress made in the implementation by Member States of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem,[540] which would be conducted by the Commission on Narcotic Drugs at its fifty-seventh session, in March 2014.

12. Refugees and displaced persons

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[541]

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR) was established by the Economic and Social Council in 1958 and functions as a subsidiary organ of the General Assembly, reporting to it through the Third Committee. The Executive Committee meets annually in Geneva to review and approve the programmes and budget of the UNHCR and its intergovernmental and non-governmental partners. The sixty-third plenary session of the Executive Committee was held in Geneva from 1 to 5 October 2012.[542]

(*b*) General Assembly

On 18 and 20 December 2012, the General Assembly adopted six resolutions relating to refugees and displaced persons, of which two are highlighted below.[543] On 20 December 2012, the General Assembly adopted resolution 67/149, entitled "Office of the United

[537] *Ibid*., vol. 2225, p. 209.

[538] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (*ibid*., vol. 2237, p. 319), Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000 (*ibid*., vol. 2241, p. 507) and Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, 2001 (*ibid*., vol. 2326, p. 208).

[539] *Ibid*., vol. 2349, p. 41.

[540] See *Official Records of the Economic and Social Council, 2009, Supplement No. 8* (E/2009/28), chapter. I, section C; see also A/64/92-E/2009/98, section II.A.

[541] For detailed information and documents regarding this topic generally, see the website of the UNHCR at http://www.unhcr.org.

[542] For the report of the sixty-third session of the Executive Committee of the High Commissioner's Programme, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement N0.12A* (A/67/12/Add.1). For the report of the United Nations High Commissioner for Refugees on the activities of his Office, see *ibid*., *Supplement No. 12* (A/67/12).

[543] General Assembly resolutions: 67/114 entitled "Assistance to Palestine refugees", 67/115 entitled "Persons displaced as a result of the June 1967 and subsequent hostilities", 67/116 entitled "Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East" and 67/117 entitled "Palestine refugees' properties and their revenues". See also resolution 66/283 entitled "Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia" adopted by the Assembly on 3 July 2012.

Nations High Commissioner for Refugees", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, endorsed the report of the Executive Committee of the Programme of the UNHCR on the work of its sixty-third session. It reaffirmed the Convention relating to the Status of Refugees, 1951,[544] and the 1967 Protocol thereto[545] as the foundation of the international refugee protection regime; recognized the importance of their full and effective application by States parties and the values they embody; noted with satisfaction the number of States that are now parties to one or both instruments; and encouraged States not parties to consider acceding to those instruments. The Assembly also underlined, in particular, the importance of full respect for the principle of *non-refoulement*. It further strongly condemned attacks on refugees, asylum seekers and internally displaced persons as well as acts that pose a threat to their personal security and well-being, and called upon all States concerned and, where applicable, parties involved in an armed conflict, to take all measures necessary to ensure respect for human rights and international humanitarian law. The Assembly also expressed deep concern about the increasing number of attacks against humanitarian aid workers and convoys and emphasized the need for States to ensure that perpetrators of attacks committed on their territory against humanitarian personnel and United Nations and associated personnel do not operate with impunity and that the perpetrators of such acts are promptly brought to justice as provided for by national laws and obligations under international law.

On the same day, the General Assembly adopted resolution 67/150 entitled "Assistance to refugees, returnees and displaced persons in Africa", on the recommendation of the Third Committee, without a vote. It reaffirmed that the Convention relating to the Status of Refugees, 1951, together with the 1967 Protocol thereto, as complemented by the Organization of African Unity Convention governing the specific aspects of refugee problems in Africa, 1969,[546] remained the foundation of the international refugee protection regime in Africa. It also called upon African Member States that had not yet signed or ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa[547] to consider doing so as early as possible in order to ensure its early entry into force and implementation. The Assembly further reaffirmed the right of return and the principle of voluntary repatriation, appealed to countries of origin and countries of asylum to create conditions that are conducive to voluntary repatriation, and recognized that, while voluntary repatriation remained the pre-eminent solution, local integration and third-country resettlement, where appropriate and feasible, were also viable options for dealing with the situation of African refugees who, owing to prevailing circumstances in their respective countries of origin, are unable to return home.

[544] United Nations, *Treaty Series*, vol. 189, p. 137.

[545] *Ibid.*, vol. 606, p. 267.

[546] *Ibid.*, vol. 1001, p. 45.

[547] Available from http://www.au.int. The Convention entered into force on 6 December 2012.

13. International Court of Justice[548]

(*a*) Organization of the Court

At the end of 2012, the composition of the Court was as follows:[549]

President: Peter Tomka (Slovakia);

Vice-President: Bernardo Sepúlveda-Amor (Mexico);

Judges: Hisashi Owada (Japan), Ronny Abraham (France), Kenneth Keith (New Zealand), Mohamed Bennouna (Morocco), Leonid Skotnikov (Russian Federation), Antônio Augusto Cançado Trindade (Brazil), Abdulqawi Ahmed Yusuf (Somalia), Christopher Greenwood (United Kingdom), Xue Hanqin (China), Joan E. Donoghue (United States of America), Giorgio Gaja (Italy), Julia Sebutinde (Uganda), Dalveer Bhandari (India).

The Registrar of the Court is Mr. Philippe Couvreur; the Deputy-Registrar is Ms. Thérèse de Saint Phalle.

The Chamber of Summary Procedure, comprising five judges, including the President and Vice-President, and two substitutes, which is established annually by the Court in accordance with Article 29 of the Statute of the International Court of Justice to ensure the speedy dispatch of business, was composed as follows:

Members:

President: Peter Tomka;

Vice-President: Bernardo Sepúlveda-Amor;

Judges: Abdulqawi Ahmed Yusuf, Xue Hanqin and Joan E. Donoghue.

Substitute members:

Judges: Leonid Skotnikov and Giorgio Gaja.

(*b*) Jurisdiction of the Court[550]

No declarations were made in 2012 recognizing the compulsory jurisdiction of the Court, as contemplated by Article 36, paragraph 2, of the Statute. Thus, as of 31 December 2012, 67 States had recognized such compulsory jurisdiction.

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[548] For more information about the Court, see the reports of the International Court of Justice to the General Assembly, *Official Records of the General Assembly, Sixty-seventh session, Supplement No. 4* (A/67/4) (for the period 1 August 2011 to 31 July 2012) and *ibid*., *Sixty-eighth Session, Supplement No. 4* (A/68/4) (for the period 1 August 2012 to 31 July 2013) (forthcoming at time of publication). See also the website of the Court at http://www.icj-cij.org.

[549] Following the resignation of Judge Awn Shawkat Al-Khasawneh (Jordan), former Vice-President of the Court, the General Assembly and the Security Council elected Mr. Dalveer Bhandari (India) on 27 April 2012, with immediate effect. Pursuant to Article 15 of the Statute of the Court, Judge Bhandari will hold office for the remainder of Judge Al-Khasawneh's term, which will expire on 5 February 2018.

[550] For further information regarding the acceptance of the compulsory jurisdiction of the International Court of Justice, see chapter I.4 of *Multilateral Treaties Deposited with the Secretary-General,* available on the website http://treaties.un.org/.

(*c*) General Assembly

On 1 November 2012, the General Assembly adopted decision 67/510, in which it took note of the report of the International Court of Justice for the period from 1 August 2011 to 31 July 2012.[551]

14. International Law Commission[552]

(*a*) Membership of the Commission

The membership of the International Law Commission at its sixty-fourth session consisted of Mr. Mohammed Bello Adoke (Nigeria), Mr. Ali Mohsen Fetais Al-Marri (Qatar), Mr. Lucius Caflisch (Switzerland), Mr. Enrique J. A. Candioti (Argentina), Mr. Pedro Comissário Afonso (Mozambique), Mr. Abdelrazeg El-Murtadi Suleiman Gouider (Libya), Ms. Concepción Escobar Hernández (Spain), Mr. Mathias Forteau (France), Mr. Kirill Gevorgian (Russian Federation), Mr. Juan Manuel Gómez-Robledo (Mexico), Mr. Hussein A. Hassouna (Egypt), Mr. Mahmoud D. Hmoud (Jordan), Mr. Huikang Huang (China), Ms. Marie G. Jacobsson (Sweden), Mr. Maurice Kamto (Cameroon), Mr. Kriangsak Kittichaisaree (Thailand), Mr. Ahmed Laraba (Algeria), Mr. Donald M. McRae (Canada), Mr. Shinya Murase (Japan), Mr. Sean D. Murphy (United States of America), Mr. Bernd H. Niehaus (Costa Rica), Mr. Georg Nolte (Germany), Mr. Ki Gab Park (Republic of Korea), Mr. Chris Maina Peter (United Republic of Tanzania), Mr. Ernest Petrič (Slovenia), Mr. Gilberto Vergne Saboia (Brazil), Mr. Narinder Singh (India), Mr. Pavel Šturma (Czech Republic), Mr. Dire D. Tladi (South Africa), Mr. Eduardo Valencia-Ospina (Colombia), Mr. Stephen C. Vasciannie (Jamaica),[553] Mr. Amos S. Wako (Kenya), Mr. Nugroho Wisnumurti (Indonesia) and Mr. Michael Wood (United Kingdom).

(*b*) Sixty-fourth session of the International Law Commission

The International Law Commission held the first part of its sixty-fourth session from 7 May to 1 June 2012, and the second part of the session from 2 July to 3 August 2012, at its seat at the United Nations Office at Geneva.[554] The Commission considered the topics entitled "Expulsion of aliens", "The obligation to extradite or prosecute (*aut dedere aut judicare*)", "Protection of persons in the event of disasters", "Immunity of State officials from foreign criminal jurisdiction", "Provisional application of treaties", "Formation and evidence of customary international law", "Treaties over time", and "The Most-Favoured-Nation clause". The consideration by the Commission of those topics is outlined below.

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[551] See *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 4* (A/67/4).

[552] Detailed information and documents relating to the work of the International Law Commission may be found on the Commission's website at http://www.un.org/law/ilc/.

[553] By a letter dated 22 July 2012, addressed to the Chairman of the Commission, Mr. S. C. Vasciannie resigned from the Commission with immediate effect. Following Mr. S .C. Vasciannie's resignation, there was, at the time of publication, one casual vacancy in the membership of the Commission.

[554] For the report of the International Law Commission on the work at its sixty-fourth session, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10).

Concerning the topic "Expulsion of aliens", the Commission had before it the eighth report[555] of the Special Rapporteur, Mr. Maurice Kamto, which provided an overview of comments made by States and by the European Union on the topic during the debate on the report of the International Law Commission that had taken place in the Sixth Committee at the sixty-sixth session of the General Assembly. The eighth report also contained a number of final observations by the Special Rapporteur, including on the form of the outcome of the Commission's work on the topic. As a result of its consideration of the topic at the sixty-fourth session, the Commission adopted on first reading a set of 32 draft articles, together with commentaries thereto, on the expulsion of aliens.[556] The Commission decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft articles, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2014.[557]

In relation to the topic "Protection of persons in the event of disasters", the Commission had before it the fifth report of the Special Rapporteur,[558] Mr. Eduardo Valencia-Ospina, providing an elaboration on the duty to cooperate, as well as a consideration of the conditions for the provision of assistance, and of the termination of assistance. Following a debate in plenary, the Commission decided to refer draft articles A, 13 and 14, as proposed by the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of five draft articles provisionally adopted by the Drafting Committee, relating to forms of cooperation, offers of assistance, conditions on the provision of external assistance, facilitation of external assistance and the termination of external assistance, respectively.[559] As to the question of the final form of the draft articles, the Special Rapporteur recalled in his concluding remarks that the approach of developing draft articles was simply the usual practice of the Commission, and was without prejudice to the final form in which they were going to be adopted. He remained open-minded on the matter and preferred to defer it until a later stage of consideration.[560]

Concerning the topic "Immunity of State officials from foreign criminal jurisdiction", the Commission appointed Ms. Concepción Escobar Hernández as Special Rapporteur. The Commission considered the preliminary report of the Special Rapporteur,[561] which provided an overview of the work of the previous Special Rapporteur, as well as the debate on the topic in the Commission and in the Sixth Committee of the General Assembly; addressed the issues to be considered during the present quinquennium, focusing in particular on the distinction and the relationship between, and basis for, immunity *ratione materiae* and immunity *ratione personae*, the distinction and the relationship between the international responsibility of the State and the international responsibility of individuals

[555] A/CN.4/651.

[556] A/CN.4/L.797.

[557] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10), chapter IV.

[558] A/CN.4/652.

[559] A/CN.4/L.812.

[560] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10), chapter V.

[561] A/CN.4/654.

and their implications for immunity, the scope of immunity *ratione personae* and immunity *ratione materiae*, and the procedural issues related to immunity; and gave an outline of the work plan. The debate revolved around, *inter alia*, the methodological and substantive issues highlighted by the Special Rapporteur in the preliminary report.[562]

As regards the topic "Provisional application of treaties", the Commission decided to include it in its programme of work and appointed Mr. Juan Manuel Gómez-Robledo as Special Rapporteur. The Special Rapporteur presented to the Commission an oral report on the informal consultations that he had chaired with a view to initiating an informal dialogue with members of the Commission on a number of issues that could be relevant for the consideration of this topic. Aspects addressed in the informal consultations included, *inter alia*, the scope of the topic, the methodology, the possible outcome of the Commission's work as well as a number of substantive issues relating to the topic.[563]

Concerning the topic "Formation and evidence of customary international law", the Commission decided to include it in its programme of work and appointed Mr. Michael Wood as Special Rapporteur. During the second part of the session, the Commission had before it a note by the Special Rapporteur,[564] which aimed at stimulating an initial debate and which addressed the possible scope of the topic, terminological issues, questions of methodology as well as a number of specific points that could be dealt with in considering the topic. The debate revolved around, *inter alia*, the scope of the topic as well as the methodological and substantive issues highlighted by the Special Rapporteur in his note.[565]

As regards the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)", the Commission established a Working Group to make a general assessment of the topic as a whole, focusing on questions concerning its viability and steps to be taken in moving forward, against the background of the debate on the topic in the Sixth Committee of the General Assembly. The Working Group requested its Chairman, Mr. Kriangsak Kittichaisaree, to prepare a working paper, to be considered at the sixty-fifth session of the Commission, reviewing the various perspectives in relation to the topic in light of the judgment of the International Court of Justice of 20 July 2012,[566] any further developments, as well as comments made in the Working Group and the debate in the Sixth Committee.[567]

As regards the topic "Treaties over time", the Commission reconstituted the Study Group on Treaties over time, which continued its work on the aspects of the topic relating to subsequent agreements and subsequent practice. The Study Group completed its consideration of the second report by its Chairman, Mr. Georg Nolte, on the jurisprudence under special regimes relating to subsequent agreements and subsequent practice, by examining some remaining preliminary conclusions contained in that report. In the

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[562] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10), chapter VI.

[563] *Ibid*., chapter VII.

[564] A/CN.4/653.

[565] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10), chapter VIII.

[566] See, *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*, International Court of Justice, Judgment of 20 July 2012.

[567] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10), chapter IX.

light of the discussions in the Study Group, the Chairman reformulated the text of six additional preliminary conclusions[568] by the Chairman of the Study Group on the following issues: subsequent practice as reflecting a position regarding the interpretation of a treaty; specificity of subsequent practice; the degree of active participation in a practice and silence; effects of contradictory subsequent practice; subsequent agreement or practice and formal amendment or interpretation procedures; and subsequent practice and possible modification of a treaty. The Study Group also considered the third report by its Chairman on subsequent agreements and subsequent practice of States outside judicial and quasi-judicial proceedings. Furthermore, the Study Group discussed the modalities of the Commission's work on the topic, and recommended that the Commission change the format of that work and appoint a Special Rapporteur. At its sixty-fourth session, the Commission decided (*a*) to change, with effect from its sixty-fifth session (2013), the format of the work on this topic as suggested by the Study Group; and (*b*) to appoint Mr. Georg Nolte as Special Rapporteur for the topic "Subsequent agreements and subsequent practice in relation to the interpretation of treaties".[569]

Regarding the topic "The Most-Favoured-Nation clause", the Commission reconstituted the Study Group on the Most-Favoured-Nation (MFN) clause, under the chairmanship of Mr. Donald M. McRae. The Study Group continued to have a discussion concerning factors which appeared to influence investment tribunals in interpreting MFN clauses, on the basis, *inter alia*, of working papers concerning Interpretation and Application of MFN Clauses in Investment Agreements and the Effect of the Mixed Nature of Investment Tribunals on the Application of MFN Clauses to Procedural Provisions. The Study Group also considered elements of the outline of its future report.[570]

Finally, the Commission established a Planning Group to consider its programme, procedures and working methods.[571] At its 1st meeting, on 22 May 2012, the Planning Group decided to establish a Working Group on the Long-term Programme of Work for the present quinquennium, chaired by Mr. Donald M. McRae. The Chairman of the Working Group submitted an oral progress report to the Planning Group on 24 July 2012, noting, *inter alia*, that the Working Group had held four meetings during which it considered some possible topics.[572] The Commission recalled that it was customary at the beginning of each quinquennium to prepare the Commission's work programme for the remainder of the quinquennium setting out in general terms the anticipated goals in respect of each topic on the basis of indications by the Special Rapporteurs. In that context, the Commission decided upon a tentative programme of work for the period from 2013 to 2016.[573]

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[568] These preliminary conclusions supplement those reproduced in the report of the Commission on the work of its sixty-third session (2011); see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 344.

[569] *Ibid*., *Sixty-seventh Session, Supplement No. 10* (A/67/10), chapter X.

[570] *Ibid*., chapter XI.

[571] *Ibid*., chapter XII, section E.

[572] *Ibid*., section E.1.

[573] For the programme of work, see *ibid*., section E.2.

(*c*) Sixth Committee

The Sixth Committee considered the agenda item entitled "Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions" at its 18th to 25th meetings on 1, 2, 5, 6, 7, 9 and 16 November 2012.[574] The Chairman of the International Law Commission at its sixty-fourth session introduced the report of the Commission on the work of that session: chapters I to V and XII at the 18th meeting, on 1 November 2012, and chapters VI to XI at the 20th meeting, on 2 November 2012. At the 18th meeting, on 1 November 2012, the Sixth Committee decided that, due to unforeseen disruptions in its programme of work, the consideration of chapter IV of the report of the International Law Commission on the work of its sixty-third session, dealing with "Reservations to treaties", would be postponed to the sixty-eighth session of the General Assembly.

At the 24th meeting of the Committee, on 9 November 2012, the representative of Peru, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions". At the 25th meeting, on 16 November 2012, the Committee adopted the draft resolution without a vote.[575]

(*d*) General Assembly

On 14 December 2012, the General Assembly adopted, without a vote, resolution 67/92 entitled "Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions", on the recommendation of the Sixth Committee, by which it took note of the report of the International Law Commission on the work of its sixty-fourth session.[576] The Assembly, *inter alia*, expressed its appreciation to the Commission for the work accomplished at its sixty-fourth session, in particular for the completion of the first reading of the draft articles on the expulsion of aliens. The Assembly drew the attention of Governments to the importance for the work of the Commission of having, their views on the various aspects of the topics on the agenda of the Commission, and in particular on the topics "Immunity of State officials from foreign criminal jurisdiction" and "Formation and evidence of customary international law". The Assembly further drew the attention of Governments to the importance for the Commission of having their comments and observations on the draft articles and commentaries on the topic "Expulsion of Aliens" by 1 January 2014. The Assembly noted with appreciation the decision of the Commission to include the topics "Provisional application of treaties" and "Formation and evidence of customary international law" in its programme of work;[577] encouraged the Commission to continue the examination of the topics that are in its long-term programme of work;[578] and invited the Commission to continue to give priority to the topics "Immunity of State

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[574] For the report of the Sixth Committee, see A/67/467. For the summary records, see A/C.6/67/SR.18 to 25.

[575] A/C.6/67/L.13.

[576] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10).

[577] *Ibid*., paras. 267 and 268.

[578] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), paras. 365–369.

officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)".

In the same resolution, the Assembly decided that the consideration of chapter IV of the report of the Commission on the work of its sixty-third session,[579] dealing with the topic "Reservations to treaties", should be continued at the sixty-eighth session of the General Assembly, during the consideration of the report of the Commission on the work of its sixty-fifth session. Furthermore, the Assembly took note of the tentative work programme of the Commission for the remainder of the quinquennium,[580] of the oral report by the Secretariat on assistance to special rapporteurs of the Commission and of paragraph 280 of the report of the Commission, and requested the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution 56/272 of 27 March 2002. In addition, the Assembly stressed the desirability of further enhancing the dialogue between the Commission and the Sixth Committee at the sixty-eighth session of the General Assembly, and in this context encouraged, *inter alia*, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending the sixty-eighth session of the Assembly.

15. United Nations Commission on International Trade Law[581]

(*a*) Forty-fifth session of the Commission

The United Nations Commission on International Trade Law (UNCITRAL) held its forty-fifth session in New York from 25 June to 6 July 2012 and adopted its report on 27 and 28 June and 6 July 2012.[582]

At the session, the Commission, recalling the adoption of its Model Law on Public Procurement at its forty-fourth session in 2011,[583] finalized and adopted the Guide to Enactment of the UNCITRAL Model Law on Public Procurement.[584] It noted in this respect that it could be expected that the Guide would greatly facilitate the understanding, enactment, interpretation and application of the Model Law and thus contribute significantly to the establishment of a harmonized and modern legal framework for public procurement.[585]

The Commission also finalized and adopted the Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010.[586] The Commission believed that the Recommenda-

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[579] *Ibid*., and addendum (A/66/10/Add.1).

[580] *Ibid*., *Sixty-seventh Session, Supplement No. 10* (A/67/10), para. 273.

[581] For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 4.

[582] *Ibid*., paras.1 and 12.

[583] *Ibid., Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 192 and annex I. The text of the Model Law is also available at http://www.uncitral.org.

[584] *Ibid., Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 13–46.

[585] *Ibid.,* para. 46.

[586] *Ibid.,* paras. 47–64 and annex I.

tions would significantly enhance the efficiency of arbitration under the 2010 UNCITRAL Arbitration Rules.[587]

The Commission further considered the reports of the fifty-fifth and fifty-sixth sessions of its Working Group II (Arbitration and Conciliation).[588] In this regard, it reaffirmed the importance of ensuring transparency in treaty-based investor-State arbitration, and urged the Working Group to complete its work on the rules on transparency for consideration by the Commission, preferably at its next session.[589] As regards future work in the field of settlement of commercial disputes, the Commission recalled its agreement at its forty-fourth session, in 2011, that the 1996 UNCITRAL Notes on Organizing Arbitral Proceedings[590] needed to be updated pursuant to the adoption of the 2010 UNCITRAL Arbitration Rules,[591] and mandated the Secretariat to undertake the revision of the Notes as its next task in the field of dispute settlement.[592]

The Commission considered the reports of the twenty-fourth and twenty-fifth sessions of its Working Group III (Online Dispute Resolution)[593] and noted the progress that had been made in respect of the Working Group's continued deliberations on the draft procedural rules on dispute resolution for cross-border electronic transactions.[594] The Commission took note of the Working Group's mindfulness of consumer protection issues throughout its deliberations, as well as the perceived benefits of online dispute resolution in promoting interaction and economic growth within and between regions, including in post-conflict situations and in developing countries,[595] and urged the Working Group to continue to include such considerations in its future work.[596] The Commission reaffirmed the mandate of Working Group III and requested the Working Group, among other things, to continue to explore a range of means of ensuring that online dispute resolution outcomes were effectively implemented, including arbitration and possible alternatives to arbitration.[597]

In the area of electronic commerce, the Commission considered the report of the forty-fifth session of its Working Group IV (Electronic Commerce) and reaffirmed the mandate of the Working Group relating to electronic transferable records.[598]

Regarding insolvency law, the Commission considered the reports of the fortieth and forty-first sessions of its Working Group V (Insolvency Law).[599] In this context, it noted

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[587] *Ibid.,* para. 64. For the text of the 2010 UNCITRAL Arbitration Rules, see *ibid., Sixty-fifth Session, Supplement No. 17* (A/65/17), annex I.

[588] *Ibid., Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 66.

[589] *Ibid*., para. 69.

[590] *Ibid*., *Fifty-first Session, Supplement No. 17* (A/51/17), chapter II.

[591] *Ibid*., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 207.

[592] *Ibid*., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 70.

[593] *Ibid*., para. 71.

[594] *Ibid*., para. 73.

[595] *Ibid*., para. 74.

[596] *Ibid*., para. 79.

[597] *Ibid.*

[598] *Ibid.,* paras. 81–82 and 90.

[599] *Ibid.,* para. 92.

the progress that had been made on two topics of current importance and where a greater degree of harmonization of national approaches would be beneficial in delivering certainty and predictability, namely: (a) guidance on the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency[600] relating to centre of main interests and possible development of a model law or provisions on insolvency law addressing selected international issues, such as jurisdictions, access and recognition, in a manner that would not preclude the development of a convention; and (b) responsibility of directors of an enterprise in the period approaching insolvency.[601] The Commission agreed that the UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective[602] adopted by the Commission at its forty-fourth session, in 2011,[603] should be revised in parallel with the current work of the Working Group to ensure consistency, and the revised text, if possible, should be submitted to the Commission for adoption at the same time as the new text on topic (*a*) above.[604]

The Commission also considered the reports of the twentieth and twenty-first sessions of its Working Group VI (Security Interests)[605] and expressed its appreciation to the Working Group for the considerable progress achieved in its work on the preparation of a guide on the registration of security rights in movable assets. It requested the Working Group to complete its work so that the draft guide would be submitted to the Commission for final approval and adoption at its forty-sixth session, in 2013.[606] The Commission agreed that, upon completion of that work, the Working Group should undertake preparation of a simple, short and concise model law on secured transactions based on the general recommendations of the UNCITRAL Legislative Guide on Secured Transactions[607] and consistent with all texts prepared by UNCITRAL on secured transactions.[608] The Commission also agreed to retain the topic of security rights in non-intermediated securities, in the sense of securities other than those credited in a securities account, on its future work programme.[609]

As regards its possible future work in the area of public procurement and related areas, the Commission instructed the Secretariat to undertake a study of existing resources and publications of other bodies that might be made available to support the implementation, interpretation and use of the UNCITRAL Model Law on Public Procurement; how to arrange ongoing collaboration with such other bodies; topics that were not yet adequately covered in the Model Law and its Guide to Enactment and that might warrant guidance papers; and options for publishing and publicizing the various resources and papers them-

[600] *Ibid., Fifty-second Session, Supplement No. 17* (A/52/17), annex I.

[601] *Ibid*., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 91 and 93.

[602] Available at http:// www.uncitral.org.

[603] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 198.

[604] *Ibid*., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 96.

[605] *Ibid*., para. 97.

[606] *Ibid*., para. 100.

[607] United Nations publication, Sales No. E.09.V.12.

[608] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 105.

[609] *Ibid*.

selves.[610] Concerning public-private partnerships, the Commission agreed that consideration of oversight mechanisms, the promotion of domestic dispute prevention and resolution mechanisms and the possible expansion of the scope of the UNCITRAL instruments on privately financed infrastructure projects[611] might be warranted.[612] The Commission also agreed to hold a colloquium to identify the scope of possible work and primary issues to be addressed.[613]

In relation to its possible future work in the area of microfinance, the Commission agreed to hold one or more colloquiums on microfinance and related matters with a focus on facilitation of simplified business incorporation and registration; access to credit for micro-businesses and small and medium-sized enterprises; dispute resolution applicable to microfinance transactions; and other topics related to creating an enabling legal environment for micro-businesses and small and medium-sized enterprises.[614]

As regards possible future work by UNCITRAL in the area of international contract law, there was a prevailing view in support of requesting the Secretariat to organize symposiums and other meetings, including at the regional level and within available resources, maintaining close cooperation with the International Institute for the Unification of Private Law (UNIDROIT), with a view to compiling further information to assist the Commission in the assessment of the desirability and feasibility of future work in the field of general contract law at a future session.[615]

Concerning texts of other organizations, the Commission commended the use of the 2010 edition of the UNIDROIT Principles of International Commercial Contracts[616] and Incoterms 2010,[617] taking note of their usefulness in facilitating international trade.

The Commission recalled its approval at its forty-fourth session, in 2011, of the establishment of the UNCITRAL Regional Centre for Asia and the Pacific,[618] which was officially opened on 10 January 2012, in Incheon, Republic of Korea.[619] At its forty-fifth session, the Commission heard a report on the work of the Regional Centre, in particular that the activities of the Regional Centre since its establishment had focused on assessing needs and mapping existing projects relating to trade law reform, with a view to increasing coordination among them.[620]

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[610] *Ibid*., para. 114.

[611] UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects (*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17), annex I); and UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (United Nations publication, Sales No. E.01.V.4).

[612] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 117.

[613] *Ibid.,* para. 120.

[614] *Ibid*., para. 126.

[615] *Ibid.,* para. 132.

[616] *Ibid*., para. 140.

[617] *Ibid*., para. 144.

[618] *Ibid.,* para. 182.

[619] *Ibid*., para. 183.

[620] *Ibid*., para. 184.

The Commission continued consideration of its technical assistance to law reform activities and stressed their importance.[621] It also continued consideration of other subjects, including the preparation of a guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958,[622] promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts,[623] status and promotion of UNCITRAL texts,[624] measures aimed at coordination and cooperation with other organizations active in the field of international trade law,[625] the role of UNCITRAL in promoting the rule of law at the national and international levels,[626] international commercial arbitration moot competitions[627] and the Commission's entitlement to summary records.[628] It also commenced consideration of the strategic direction for UNCITRAL.[629] Finally, the Commission took note of relevant General Assembly resolutions.[630]

(*b*) Sixth Committee

The Sixth Committee considered the item "Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session" at its 9th, 23rd and 24th meetings, on 15 October and on 6 and 9 November 2012.[631] For its consideration of the item, the Committee had before it the report of UNICTRAL on the work of its forty fifth sessions.

At the 9th meeting, on 15 October, the Chair of UNCITRAL at its forty-fifth session introduced the report of the Commission.

At the 23rd meeting, on 6 November, the representative of Austria, on behalf of several States, introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session".[632] At the same meeting, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under UNCITRAL Arbitration Rules as revised in 2010".[633] At its 24th meeting, on 9 November, the Committee adopted the draft resolutions without a vote.

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[621] *Ibid*., paras. 145–148.

[622] *Ibid*., paras. 133–136.

[623] *Ibid*., paras. 149–158.

[624] *Ibid*., paras. 159–161.

[625] *Ibid*., paras. 162–181.

[626] *Ibid*., paras. 195–227.

[627] *Ibid*., paras. 233–235.

[628] *Ibid*., paras. 241–249.

[629] *Ibid*., paras. 228–232.

[630] *Ibid*., paras. 236–238.

[631] For the report of the Sixth Committee. See A/67/465. For the summary records, see A/C.6/67/SR.9, 23 and 24.

[632] A/C.6/67/L.8.

[633] A/C.6/67/L.7.

(*c*) General Assembly

On 14 December 2012, the General Assembly adopted resolution 67/89 entitled "Report of the Commission on the work of its forty-fifth session" and resolution 67/90 entitled "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as revised in 2010", without a vote, on the recommendation of the Sixth Committee.

16. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixty-seventh session of the General Assembly, the Sixth Committee (Legal), in addition to the topics concerning the International Law Commission and the United Nations Commission on International Trade Law, discussed above, considered a wide range of topics. The work of the Sixth Committee and of other related subsidiary organs is described below, together with the relevant resolutions and decisions adopted by the General Assembly in 2012.[634] The resolutions and decisions of the General Assembly described in this section were all adopted, without a vote, during the sixty-seventh session, on 14 December 2012, on the recommendation of the Sixth Committee.[635]

(*a*) Criminal accountability of United Nations officials and experts on mission

The item entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects" was included in the agenda of the General Assembly at its nineteenth session, in February 1965, when the General Assembly established the Special Committee on Peacekeeping Operations that was to undertake a comprehensive review of the whole question of peacekeeping operations in all their aspects.[636]

At its sixty-first session, in 2006, the General Assembly decided that the agenda item entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects", which had been allocated to the Special Political and Decolonization Committee (Fourth Committee), should also be referred to the Sixth Committee for discussion of the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peace-

[634] For further information and documents regarding the work of the Sixth Committee and the other related subsidiary organs of the General Assembly mentioned in this section, see http://www.un.org/en/ga/sixth/67/67_session.shtml.

[635] The Sixth Committee adopts drafts resolutions, which it recommends for adoption by the General Assembly. These resolutions are contained in the reports of the Sixth Committee to the General Assembly on the various agenda items. The Sixth Committee reports also contain information concerning the relevant documentation on the consideration of the items by the Sixth Committee.

[636] General Assembly resolution 2006 (XIX) of 18 February 1965.

keeping operations,[637] submitted pursuant to General Assembly resolution 59/300.[638] At the same session, the General Assembly decided to establish an *ad hoc* committee, for the purpose of considering the report of the Group of Legal Experts, in particular its legal aspects and to report on its work to General Assembly under the agenda item entitled "Criminal Accountability of United Nations officials and experts on mission".[639] The General Assembly considered this item at its sixty-second to sixty-sixth sessions.

(i) *Sixth Committee*

During the sixty-seventh session of the General Assembly, the Sixth Committee considered the item at its 8th, 9th, 24th and 25th meetings, on 12 and 15 October and on 9 and 16 November 2012.[640] For its consideration of the item, the Committee had before it the report of the Secretary-General on criminal accountability of United Nations officials and experts on mission.[641]

At its 1st meeting, on 8 October, the Sixth Committee established a working group pursuant to General Assembly resolution 66/93 in order to fulfil the mandate conferred by the General Assembly on the Committee, namely to continue to consider the report of the Group of Legal Experts,[642] in particular its legal aspects, taking into account the views of Member States and the information contained in the note by the Secretariat.[643] The Working Group held two meetings, on 23 and 25 October 2012.[644]

In their general comments, delegations, *inter alia*, underlined the imperative to guard against impunity and the need to ensure that all United Nations personnel perform their functions in a manner that is consistent with the Charter of the United Nations and preserves the image, credibility, impartiality and integrity of the Organization. In this regard, they reiterated their support for the zero tolerance policy of the United Nations, particularly against sexual exploitation and abuse, and expressed concern that, despite the attention drawn to the subject in recent years, there were continuing allegations that undermined the work, image and credibility of the United Nations. Some delegations underlined the need for the observance of the rule of law in the implementation of the Organization's zero tolerance policy. Other delegations urged States to redouble their efforts to develop practical ways to address the need for accountability and called for the full implementation of the General Assembly resolutions adopted under this agenda item.

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[637] A/60/980.

[638] General Assembly decision 61/503A of 13 September 2006.

[639] The Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission was established by General Assembly resolution 61/29 of 4 December 2006. The Ad Hoc Committee held two sessions at United Nations Headquarters in New York, from 9 to 13 April 2007 and from 7 to 9 and on 11 April 2008. For more information, see http://www.un.org/law/criminalaccountability/.

[640] For the report of the Sixth Committee, see A/67/464. For the summary records, see A/C.6/67/SR.8, 9, 24 and 25.

[641] A/67/213.

[642] A/60/980.

[643] A/62/239.

[644] At its 24th meeting, on 9 November, the Sixth Committee heard the oral report of the Chair of the Working Group (see A/C.6/67/SR.24).

Concerning the establishment of criminal jurisdiction over serious crimes committed by United Nations officials and experts on mission, some delegations noted that, although there had been progress on the matter, more needed to be done to ensure criminal accountability. In this regard, States were encouraged to take the necessary steps to prosecute their nationals for any offence committed while on mission, if necessary by adapting their national legislation to include the active personality principle. It was also suggested that the Secretary-General establish a list of States that currently include this principle in their national legislation. Other delegations were of the view that one of the possible ways of ensuring the successful prosecution of such crimes was the adoption of a more flexible test in assessing the dual criminality requirement. It was noted that measures taken by any State against United Nations personnel must be consistent with the provisions of the Convention on the Privileges and Immunities of the United Nations, 1946.[645]

Delegations generally welcomed the recent referrals by the Organization of cases of alleged criminal conduct to the State of nationality of the official or expert on mission concerned, for investigation and possible prosecution, and urged States to report back to the United Nations. States were also called upon to report on efforts taken to investigate and, where appropriate, prosecute their nationals for committing crimes of a serious nature while serving as United Nations officials or experts on mission. It was regretted that few responses had been received from the States concerned on how credible allegations had been handled by their domestic authorities.

Several delegations emphasized the importance of strengthening cooperation among States, as well between States and the United Nations, particularly with respect to extradition and mutual assistance in matters and in relation to investigations, exchange of information and the collection and securing the integrity of evidence.

Highlighting the significance of preventive approaches, delegations commended the Organization's efforts in the pre-deployment and in-mission training of peacekeeping personnel. Some delegations noted that it was also the responsibility of Member States to provide preventive training of their peacekeeping personnel, in particular through pre-deployment and in-mission training. In this regard, delegations also recalled the adoption of the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by the United Nations Staff and Related Personnel.[646] The need to address the concerns of victims was generally stressed by delegations.

On the reporting obligations of the Secretary-General under the relevant General Assembly resolutions, some delegations welcomed the latest report of the Secretary-General,[647] which included, *inter alia*, relevant information provided by Governments on jurisdictional issues as well as information on cases that had been referred by the Organization to the State of nationality of the alleged perpetrators. Some delegations noted that they were not convinced that the registered number of allegations reflected the true extent of the problem.

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[645] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

[646] General Assembly resolution 62/214 of 21 December 2007.

[647] A/67/213.

Regarding future follow-up action, most delegations looked forward to further discussion of the report of the Group of Legal Experts[648] at the current session. Some delegations called for the full implementation of the resolutions adopted so far by the General Assembly on this item. Different views were expressed concerning the possible elaboration of a convention to ensure the criminal accountability of United Nations officials and experts on mission. Some delegations expressed support for such a convention, suggesting that the convention should also cover military personnel. It was also observed that, without undermining the jurisdiction of the territorial State, such a convention could envisage the subsidiary jurisdiction of international tribunals, particularly in respect of sexual crimes. Some delegations also stated that they were ready to discuss a comprehensive legal framework. Some other delegations considered that it was still premature to discuss a draft convention, believing that such a step would only be necessary if jurisdictional gaps were shown to exist. It was noted by some delegations that a convention was not needed, since the problem could be effectively addressed through the adoption of appropriate domestic legislation. Some other delegations also took the position that it was doubtful whether such a convention would be the most efficient and practical way of addressing the issues at stake, and that it was preferable, at this stage, to address the substantive matters, while leaving the question of form for a later stage. Other delegations called for the implementation of the amended draft model Memorandum of Understanding.[649]

At the 24th meeting, on 9 November, the representative of Ukraine, on behalf of the Bureau, introduced a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission".[650] At its 25th meeting, on 16 November, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

In resolution 67/88, the General Assembly, *inter alia*, took note of the report of the Secretary-General[651] and strongly urged States to take all appropriate measures to ensure that crimes committed by United Nations officials and experts on mission do not go unpunished and that perpetrators of such crimes be brought to justice. The Assembly also strongly urged all States to consider establishing, to the extent that they had not yet done so, jurisdiction over crimes, particularly those of a serious nature, as known in their existing national criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State, and, further urged States and appropriate international organizations to provide technical and other appropriate assistance in developing such legal measures to States requesting such support.

It encouraged all States to cooperate with each other and with the United Nations in the exchange of information and in facilitating the conduct of investigations and, as appropriate, the prosecution of United Nations officials and experts on mission who were alleged to have committed crimes of a serious nature, in accordance with their national law

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[648] A/ 60/980.

[649] General Assembly resolution 61/291 of 24 July 2007.

[650] A/C.6/67/L.17.

[651] A/67/213.

and applicable United Nations rules and regulations, fully respecting due process rights, as well as to consider strengthening the capacities of their national authorities to investigate and prosecute such crimes. Furthermore, the General Assembly encouraged all States: (*a*) to afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials and experts on mission, including assistance in obtaining evidence at their disposal, in accordance with their domestic law or any treaties or other arrangements on extradition and mutual legal assistance that may exist between them; (*b*) in accordance with their domestic law, to explore ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in their territory for the prosecution of crimes of a serious nature committed by United Nations officials and experts on mission, bearing in mind due process considerations; (*c*) in accordance with their national law, to provide effective protection for victims of, witnesses to and others who provide information in relation to crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access of victims to victim assistance programmes, without prejudice to the rights of the alleged offender, including those relating to due process; and (*d*) in accordance with their national law, to explore ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations in respect of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission.

The Assembly decided that, bearing in mind its resolutions 62/63 and 63/119, the consideration of the report of the Group of Legal Experts, in particular its legal aspects, taking into account the views of Member States and also noting the inputs by the Secretariat, should continue during its seventieth session in the framework of a working group of the Sixth Committee; and decided to include the item in the provisional agenda of its sixty-eighth session.

(*b*) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was established by the General Assembly at its twentieth session in 1965,[652] to provide direct assistance in the field of international law, as well as through the preparation and dissemination of publications and other information relating to international law. The Assembly authorized the continuation of the Programme of Assistance annually until its twenty-sixth session, biennially until its sixty-fourth session and annually thereafter.

In the performance of the functions entrusted to him by the General Assembly, the Secretary-General is assisted by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, the members of which are appointed by the Assembly.

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[652] General Assembly resolution 2099 (XX) of 20 December 1965. For further information on the Programme of Assistance, see http://www.un.org/law/programmeofassistance.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 16th, 17th, 24th and 25th meetings, on 24 October and on 9 and 16 November 2012.[653] For its consideration of the item, the Committee had before it the report of the Secretary-General.[654]

Delegations, *inter alia*, welcomed the report of the Secretary-General and expressed their strong support for the Programme of Assistance. Some delegations underlined that the Programme is a core activity of the United Nations and expressed concern about the financial situation of the Programme, notably the sustainability of the Programme under voluntary contributions. In this regards, several delegations favoured providing adequate resources for the Programme in the programme budget for the 2014–2015 biennium. It was noted that it was important to ensure that the Programme had adequate resources, within overall existing resources.

At the 24th meeting, on 9 November 2012, the representative of Ghana, on behalf of the Bureau, introduced a draft resolution entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".[655] At the 25th meeting, on 16 November, the Committee adopted the draft resolution, without a vote.

(ii) *General Assembly*

In resolution 67/91 of 14 December 2012, the General Assembly reaffirmed that the Programme constituted a core activity of the United Nations and that there was an increase in the demand for international law training, which created new challenges for the Programme. The Assembly, *inter alia*, authorized the Secretary-General to carry out the activities specified in his reports[656] on the Programme in 2013. It reiterated its request to the Secretary-General to provide to the programme budget for 2014–2015 the resources necessary for the Programme to ensure its continued effectiveness and further development, in particular the organization of the Regional Courses in International Law on a regular basis and the viability of the Audiovisual Library of International Law. The Assembly decided to consider the viability of voluntary contributions as a sustainable method for funding the Regional Courses in International Law and the Audiovisual Library of International Law and the need to provide a more reliable funding method, taking into account the recommendation of the Advisory Committee at its forty-eighth session. In addition, the Assembly decided to include the item in the provisional agenda of its sixty-eighth session.

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[653] For the report of the Sixth Committee, see A/67/ 466. For the summary records, see A/C.6/67/SR.16, 17, 24 and 25.

[654] A/67/518.

[655] A/C.6/67/L.15.

[656] A/66/505 and A/67/518.

(*c*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

This item was included in the agenda of the thirty-seventh session of the General Assembly, in 1982, at the request of Denmark, Finland, Norway and Sweden.[657] The General Assembly considered the question biennially at its thirty-seventh to sixty-fifth sessions.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 15th, 24th and 25th meetings, on 22 October and on 9 and 16 November 2012.[658] For its consideration of the item, the Committee had before it the report of the Secretary-General.[659]

During the debate on this item, delegations, *inter alia*, recalled the importance of the Geneva Conventions of 1949[660] and the Protocols Additional thereto,[661] stressed the need for those States that had not already done so to ratify the Protocols as well as accede to other relevant instruments and to comply with their norms. A reference was made to the joint initiative launched by Switzerland and the International Committee of the Red Cross (ICRC) to identify concrete ways to strengthen the application of international humanitarian law and all States were encouraged to implement the Action plan adopted by the 31st International Conference of the Red Cross and Red Crescent in 2011. The need to ensure that the law of armed conflict is capable of meeting the challenges of asymmetric warfare was stressed. A view was also expressed cautioning against double standards in the implementation of international humanitarian law.

Some delegations encouraged States to accept the competence of the International Humanitarian Fact-Finding Commission, pursuant to article 90 of the First Additional Protocol. Some delegations stressed the important role played by the International Criminal Court and international criminal tribunals in promoting respect for international humanitarian law. In this regard, some delegations welcomed the extension of the Court's jurisdiction over certain war crimes achieved at the Rome Statute Review Conference in Kampala in 2010 and stressed the need to ratify the corresponding amendments to the Statute. Some delegations welcomed the entry into force in 2010 of the Convention on Cluster Munitions[662] and encouraged States to accede to it. Concern was expressed over the increasing numbers of civilians being targeted in armed conflicts and the need to apply international humanitarian law was stressed.

Some delegations spoke in favour of further efforts to clarify legal obligations and to define good practices relevant to private military and security companies operating in an

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[657] A/37/142.

[658] For the report of the Sixth Committee, see A/67/468. For the summary records, see A/C.6/67/SR.15, 24 and 25.

[659] A/67/182 and Add.1.

[660] United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135 and 287.

[661] *Ibid*., vol. 1125, p. 3 and p. 609.

[662] *Ibid*., treaty registration No. 47713.

armed conflict and, in this context, plans of Switzerland to organize, in cooperation with the ICRC, a conference on this issue in 2013 were announced.

At the 24th meeting, on 9 November 2012, the representative of Sweden, on behalf of several States, introduced a draft resolution entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".[663] At the 25th meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

In resolution 67/93, the General Assembly, *inter alia*, welcomed the universal acceptance of the Geneva Conventions of 1949 and noted the trend towards a similarly wide acceptance of the two Additional Protocols of 1977. It called upon all States that are already parties to Protocol I, or those States not parties, on becoming parties to Protocol I, to make the declaration provided for under article 90 of that Protocol and to consider making use, where appropriate, of the services of the International Humanitarian Fact-Finding Commission in accordance with the provisions of article 90 of Protocol I. The Assembly noted with appreciation the adoption at the Thirty-first International Conference of the Red Cross and Red Crescent of resolution 1 entitled "Strengthening legal protection for victims of armed conflicts" in which the Conference, *inter alia*, stressed that greater compliance with international humanitarian law is an indispensable prerequisite for improving the situation of victims of armed conflict and reaffirmed the obligation of all States and all parties to armed conflict to respect and ensure respect for international humanitarian law in all circumstances.

The Assembly requested that the Secretary-General submit to it at its sixty-ninth session a report on the status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, *inter alia*, with respect to its dissemination and full implementation at the national level, based on information received from Member States and the ICRC. The Assembly decided to include the item in the provisional agenda of its sixty-ninth session.

(*d*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

This item was included in the agenda of the thirty-fifth session of the General Assembly, in 1980, at the request of Denmark, Finland, Iceland, Norway and Sweden.[664] The General Assembly considered the item annually at its thirty-sixth to forty-third sessions, and biennially thereafter.

[663] A/C.6/67/L.14.

[664] A/35/142.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 15th, 16th, 24th and 25th meetings, on 22, 24 October and on 9 and 16 November 2012.[665] For its consideration of the item, the Committee had before it the report of the Secretary-General.[666]

During the debate on this item, delegations, *inter alia*, welcomed the Secretary-General's report on the topic. They strongly condemned the continuing acts of violence against the security and safety of diplomatic and consular missions and their representatives, urged States to respect their obligations under international law and to take all the necessary measures in order to protect the diplomatic and consular missions and the representatives within their territories. A reference was also made to the need to protect missions and representatives of international organizations. Some delegations stressed that the breaches by the States of the obligations in this field entailed an obligation to take remedial actions. Some delegations emphasized the need and responsibility to take preventive measures. The importance of respecting the laws of the receiving States was also stressed.

At the 24th meeting, on 9 November, the representative of Finland, on behalf of several States, introduced a draft resolution entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".[667] At its 25th meeting, on 16 November, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

In resolution 67/94, the General Assembly, *inter alia*, urged States to strictly observe, implement and enforce the applicable principles and rules of international law governing diplomatic and consular relations, including during a period of armed conflict, and, in particular, to ensure, in conformity with their international obligations, the protection, security and safety of the diplomatic and consular missions and representatives, as well as missions and representatives to and officials of international intergovernmental organizations, officially present in territories under their jurisdiction, including practical measures to prevent and prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts against the security and safety of such missions, representatives and officials. It also urged States to take all appropriate measures at the national and international levels to prevent any acts of violence against such missions, representatives and officials, including during a period of armed conflict, and to ensure, with the participation of the United Nations where appropriate, that such acts are fully investigated with a view to bringing offenders to justice.

The Assembly further called upon States, in cases where a dispute arises in connection with a violation of their international obligations concerning the protection of the missions or the security of such representatives and officials, to make use of the means available for

[665] For the report of the Sixth Committee, see A/67/469. For the summary records, see A/C.6/67/SR.15, 16, 24 and 25.

[666] A/67/126 and Add.1.

[667] A/C.6/67/L.10.

peaceful settlement of disputes, including the good offices of the Secretary-General, and requested the Secretary-General, when he deemed it appropriate, to offer his good offices to the States directly concerned.

The Assembly urged: (*a*) all States to report to the Secretary-General serious violations of the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations; and (*b*) the State in which the violation took place—and, to the extent possible, the State where the alleged offender is present—to report to the Secretary-General on measures taken to bring the offender to justice and eventually to communicate the final outcome of the proceedings against the offender, and to report on measures adopted with a view to preventing a repetition of such violations.

It requested that the Secretary-General submit to the Assembly at its sixty-ninth session a report containing information on the state of ratification of and accessions to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives; and a summary of the reports received from States on serious violations of the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations and actions taken against offenders, as well as of the views of States with respect to any measures needed to enhance the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations. The Assembly further decided to include this item in the provisional agenda of its sixty-ninth session.

(*e*) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

(i) *Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*[668]

The item entitled "Need to consider suggestions regarding the review of the Charter of the United Nations" was included in the agenda of the twenty-fourth session of the General Assembly, in 1969, at the request of Colombia.[669]

At its twenty-ninth session, in 1974, the General Assembly decided to establish an Ad Hoc Committee on the Charter of the United Nations to consider any specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes, as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter.[670]

Meanwhile, another item, entitled "Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the

[668] For more information, see the website of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, available from http://www.un.org/law/chartercomm/.

[669] A/7659.

[670] General Assembly resolution 3349 (XXIX) of 17 December 1974.

development of cooperation among all nations and the promotion of the rules of international law in relations between States", was included in the agenda of the twenty-seventh session of the General Assembly, at the request of Romania.[671]

At its thirtieth session, the General Assembly decided to reconvene the Ad Hoc Committee as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, to examine suggestions and proposals regarding the Charter and the strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law.[672] Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

The Special Committee met at United Nations Headquarters from 21 to 28 February and on 1 March 2012.[673] The issues considered by the Special Committee during its 2012 session in relation to the item "Maintenance of international peace and security" were: (i) report by the Secretary-General entitled "Implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions";[674] (ii) a revised working paper submitted by Libya at the 2002 session on the strengthening of certain principles concerning the impact and the application of sanctions;[675] (iii) a revised proposal submitted by Libya at the 1998 session with a view to strengthening the role of the United Nations in the maintenance of international peace and security;[676] (iv) a further revised working paper submitted by the Bolivarian Republic of Venezuela at the 2011 session entitled "Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs";[677] (v) a revised working paper submitted by Belarus and the Russian Federation at the 2005 session, in which it was recommended, *inter alia*, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence;[678] and (vi) a working paper introduced by Cuba at the 2012 session entitled "Strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations".[679]

In connection with the item entitled "Peaceful settlement of disputes", the Special Committee considered a proposal introduced by the Philippines for a recommendation on the thirtieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes.[680] The Special Committee also considered the items "*Repertory of Practice*

[671] A/8792.

[672] General Assembly resolution 3499 (XXX) of 15 December 1975.

[673] For the report of the Special Committee, see *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 33* (A/67/33).

[674] A/66/213.

[675] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89.

[676] *Ibid.*, *Fifty-third Session, Supplement No. 33* (A/53/33), para. 98.

[677] *Ibid.*, *Sixty-sixth Session, Supplement No. 33* (A/66/33), annex.

[678] *Ibid.*, *Sixtieth Session, Supplement No. 33* (A/60/33), para. 56.

[679] *Ibid.*, *Sixty-seventh Session, Supplement No. 33* (A/67/33), annex.

[680] A/AC.182/L.132.

of United Nations Organs and *Repertoire of the Practice of the Security Council*" and "Working methods of the Special Committee and identification of new subjects".

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 7th, 8th, 16th, 23rd, 24th and 25th meetings, on 11, 12 and 24 October and on 6, 9 and 16 November 2012.[681] For its consideration of the item, the Committee had before it the following documents: report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;[682] report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*);[683] and report of the Secretary-General on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.[684]

In the context of the maintenance of international peace and security, several delegations expressed the view that sanctions should be considered as a last resort, and that they should be implemented in accordance with international law and the Charter of the United Nations. It was also noted that the objectives of sanctions regimes should be clearly defined, based on tenable legal grounds, imposed for a specified time-frame, with the conditions on which the sanctions are imposed clearly defined and subject to periodic review. Some delegations stressed the importance of considering the legal consequences of arbitrarily imposed sanctions, including the question of compensation. A focus on minimizing the humanitarian effects of sanctions was suggested by several delegations.

With regard to the implementation of the provisions of the Charter of the United Nations relating to assistance to third States affected by the application of sanctions under Chapter VII, several delegations urged the Special Committee to continue to analyze the topic, and stressed the need for concrete recommendations on ways to assist third States and for greater transparency in the work of sanctions committees. The establishment of a mechanism for assisting affected States was proposed. Other delegations pointed to the substantive and procedural safeguards adopted by the Security Council to mitigate the adverse effects of sanctions on third States, and called for the topic to be removed from the agenda of the Special Committee.

Several delegations expressed interest in the proposal submitted by the Bolivarian Republic of Venezuela to establish an open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs. A continuing interest was also expressed by several delegations in the revised proposal submitted by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security, as well as in the working paper submitted by Cuba at the 2012 session on the strengthening of the role of

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[681] For the report of the Sixth Committee, see A/67/470. For the summary records, see A/C.6/67/SR.7, 8, 16, 23, 24 and 25.

[682] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 33* (A/67/33).

[683] A/67/189.

[684] A/67/190.

the Organization and enhancing its effectiveness. Other delegations spoke in opposition to the consideration of either paper by Libya and Cuba.

While several delegations were of the view that the proposal submitted by Belarus and the Russian Federation to request an advisory opinion from the International Court of Justice on the legal consequences of the resort to the use of force by States without prior authorization by the Security Council except in the exercise of the right of self-defense should remain on the agenda of the Special Committee, other delegations spoke in opposition to that proposal.

Concerning the peaceful settlement of disputes, several delegations emphasized the importance of this topic and encouraged the Special Committee to keep the item on its agenda. A number of delegations referred to the significance of the Manila Declaration on the Peaceful Settlement of International Disputes and welcomed the commemoration of its thirtieth anniversary.

The progress made by the Secretariat in the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* was welcomed by several delegations, in particular the efforts undertaken to reduce the backlog of those publications and to make them available on the Internet. The Secretariat was again requested to intensify its efforts aimed at the preparation of volume III of the *Repertory*. Several delegations spoke in favour of issuing the publications in all official languages of the United Nations.

On the issue of the identification of new subjects, while some delegations emphasized the right of all States to present new proposals, others pointed to the fact that many of the proposals before the Special Committee were duplicative of efforts undertaken elsewhere in the Organization. Support was expressed for a proposal by Ghana for the inclusion of a new item on principles and practical measures/mechanisms for strengthening and ensuring more effective cooperation between the United Nations and regional organizations on matters relating to international peace and security in areas of conflict prevention and resolution and post-conflict peacebuilding and peacekeeping.

Several delegations called for the improvement of the working methods of the Special Committee. Suggestions included holding biennial meetings and/or shortened sessions; and holding thematic debates. A reduction in the duration of the session of the Special Committee was opposed.

At the 16th meeting, on 24 October, the representative of the Philippines, on behalf of the Bureau, introduced a draft resolution entitled "Thirtieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes".[685] At the 23rd meeting, on 6 November, the Committee adopted the draft resolution without a vote.

At the 24th meeting, on 9 November, the representative of Egypt, on behalf of the Bureau, introduced a draft resolution entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization".[686] At the 25th meeting, on 16 November, the Committee adopted the draft resolution without a vote.

[685] A/C.6/67/L.3.

[686] A/C.6/67/L.11.

(iii) *General Assembly*

In resolution 67/95, the General Assembly encouraged all Member States to commemorate the thirtieth anniversary of the adoption of the Manila Declaration on the Peaceful Settlement of International Disputes.

In resolution 67/96, the General Assembly, *inter alia*, requested the Special Committee to continue its consideration of all proposals concerning the question of the maintenance of international peace and security and of the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, and to continue to consider, on a priority basis, ways and means of improving the Committee's working methods and enhancing its efficiency.

(*f*) The rule of law at the national and international levels

This item was included in the provisional agenda of the sixty-first session of the General Assembly, in 2006, at the request of Liechtenstein and Mexico.[687] The Assembly considered the item from its sixty-first to its sixty-sixth sessions.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 4th to 7th, 24th and 25th meetings, on 10 and 11 October and on 9 and 16 November 2012.[688] For its consideration of the item, the Committee had before it the report of the Secretary-General entitled "Delivering justice: programme of action to strengthen the rule of law at the national and international levels"[689] and the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities.[690]

During the debate on this item, several delegations welcomed the convening of the high level meeting of the General Assembly on the rule of law at the national and international levels on 24 September 2012 and the adoption of the Declaration on the Rule of Law at the National and International Levels.[691] Some delegations regretted that the contribution of civil society organizations was not acknowledged in the Declaration and a view was expressed that the Declaration should have adopted a more action-oriented approach and established a follow-up mechanism. Some delegations expressed reservations regarding certain provisions of the Declaration; some other delegations emphasized the need for a concrete implementation of the principles recognized in the Declaration.

In their general observations, many delegations affirmed their commitment to uphold and develop an international order based on the rule of law and international law. In this respect, they stressed that the purposes and principles of the Charter of the United Nations and the principles of international law are paramount to international peace and security,

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[687] A/61/142.

[688] For the report of the Sixth Committee, see A/67/471. For the summary records, see A/C.6/67/SR.4 to 7, 24 and 25.

[689] A/66/749.

[690] A/67/290.

[691] General Assembly resolution 67/1 of 24 September 2012.

the advancement of socioeconomic development and human rights. Several delegations reaffirmed the duty of States to settle their disputes by peaceful means and acknowledged the important role played in this regard by international courts and tribunals, hybrid courts, treaty bodies and truth and reconciliation commissions, as well as the necessity to fight impunity for serious international crimes, such as genocide, war crimes and crimes against humanity. Some delegations called on all States that had not done so to accept the compulsory jurisdiction of the International Court of Justice and to ratify the Rome Statute of the International Criminal Court and its amendments. Some delegations emphasized the importance of rule of law in building sustainable peace in countries in conflict and post-conflict situations. Concerns about the application of unilateral measures in international relations were also expressed.

Some delegations stressed the need of strengthening support to States in the domestic implementation of their respective international obligations through enhanced technical assistance and capacity-building. The critical importance of national ownership in rule of law activities was also emphasized. The need to ensure respect for the rule of law within the United Nations was also underlined. Some delegations called for a revitalization of the General Assembly, as well as a reform of the Security Council and of the Bretton Woods institutions.

Regarding the future work on the topic, support was expressed by several delegations for further General Assembly discussion on the rule of law, particularly in the Sixth Committee. In this regard, some delegations suggested that the General Assembly should reflect on the linkages between the rule of law and the three pillars of the United Nations, especially the inter-relationship between the rule of law and sustainable development in the post-2015 international development agenda. Support was expressed for the further consideration of subtopics, namely on the principles of the rule of law, the rule of law and the independence of the judiciary, the relationship between the rule of law and democracy, the rule of law and security as well as legitimacy and balance of powers in the context of the rule of law. It was suggested that the question on the reinforcement of national judicial mechanisms could also be considered. It was observed that the subtopics proposed by the Secretary-General[692] were not suitable for the Sixth Committee and it was therefore suggested that the following subtopics be considered: the rule of law and the peaceful settlement of international disputes; the rule of law and the use of force in international relations; the rule of law and combating terrorism and transnational organized crime; the rule of law and economic development; and the rule of law and the reform of the international financial system. It was also suggested that topics such as reform of the Security Council, sanctions and extraterritorial application of domestic laws should be considered.

At the 24th meeting, on 9 November, the representative of Liechtenstein, on behalf of the Bureau, introduced a draft resolution entitled "The rule of law at the national and international levels".[693] At the 25th meeting, on 16 November, the Committee adopted the draft resolution without a vote.

[692] A/67/290, chapter V.

[693] A/C.6/67/L.9.

(ii) *General Assembly*

In resolution 67/97, the General Assembly, *inter alia*: recalled the high-level meeting of the Assembly on the rule of law at the national and international levels, held during the high-level segment of its sixty-seventh session and the Declaration adopted at that meeting;[694] reiterated the request to the Secretary-General to ensure greater coordination and coherence among United Nations entities and with donors and recipients; and called upon the Secretary-General and the United Nations system to systematically address, as appropriate, aspects of the rule of law in relevant activities, including the participation of women in rule of law-related activities, recognizing the importance of the rule of law to virtually all areas of United Nations engagement. The General Assembly further decided to include the item in the provisional agenda of its sixty-eighth session and invited Member States to focus their comments in the upcoming Sixth Committee debates on the subtopics "The rule of law and the peaceful settlement of international disputes" (sixty-eighth session) and "Sharing States' national practices in strengthening the rule of law through access to justice" (sixty-ninth session).

(*g*) The scope and application of the principle of universal jurisdiction

This item was included in the provisional agenda of the sixty-fourth session of the General Assembly, at the request of the United Republic of Tanzania.[695] The Assembly considered the item at its sixty-fourth to sixty-sixth sessions.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 12th, 13th, 24th and 25th meetings, on 17 and 18 October and on 9 and 16 November 2012.[696] For the consideration of the item, the Committee had before it the reports of the Secretary-General, submitted to the General Assembly at its sixty-fifth, sixty-sixth and sixty-seventh sessions.[697]

At its 1st meeting, on 8 October, the Committee established a working group pursuant to General Assembly resolution 66/103 to undertake a thorough discussion of the scope and application of the principle of universal jurisdiction. The Working Group held four meetings, on 18, 19 and 25 October. At its 24th meeting, on 9 November, the Committee heard the oral report of the Chair of the Working Group.[698]

In their general comments, delegations took note of and welcomed the annual report of the Secretary General[699] and observed that they continued to follow the agenda item with keen interest. Several delegations noted that universal jurisdiction provided a tool to prosecute the perpetrators of certain serious crimes under international law. Some other

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[694] General Assembly resolution 67/1 of 24 September 2012.

[695] A/63/237/Rev.1.

[696] For the report of the Sixth Committee, see A/67/472. For the summary records, see A/C.6/67/SR.12, 13, 24 and 25.

[697] A/65/181, A/66/93 and Add.1 and A/67/116.

[698] A/C.6/67/SR.24.

[699] A/67/116.

delegations stated that it was an institution or principle of international law pursuant to which criminal jurisdiction is exercised exceptionally for the purpose of fighting impunity and strengthening justice. While it was reiterated that all States should ensure that they have a proper national legal framework in place, particularly to close the impunity gap for war crimes, including grave breaches under the Geneva Conventions, some delegations indicated that they did not welcome the creation of uniform standards regarding the principle at the international level. The view was expressed that international regulation of the exercise universal jurisdiction would unduly curb State sovereignty.

With regard to the scope of the principle, delegations highlighted the importance of agreeing on a definition of universal jurisdiction and the need to distinguish it from other related concepts, such as international criminal jurisdiction, the obligation to extradite or prosecute, as well as other related principles and rules of international law. In this context, several delegations acknowledged the existing controversy regarding the definition of the principle. In addition, the link between universal jurisdiction and the question of immunity of State officials, in particular Heads of State and Government was highlighted. Several delegations expressed the view that there was a delicate balance to be struck between the prevention of impunity and the free exercise of sovereignty by agents of the State, whereby immunity of State officials must be upheld. Several delegations also stated that the exercise of criminal jurisdiction over high-ranking officials who enjoy immunity under international law violated the sovereignty of States, and that a moratorium on all pending arrest warrants filed against certain leaders was needed. It was also noted, however, that discussions on universal jurisdiction should not be taken over by discussions on immunity, given in particular that the latter, which was also implicated with respect to other bases of jurisdiction, may prejudice the Committee's consideration of the topic.

Concerning the related question of crimes covered by the principle, several delegations noted that the principle covered the most serious or heinous crimes of concern to the international community. Certain delegations also noted, however, the divergence of views on the question of crimes, as reflected in the report of the Secretary-General, except for piracy, and urged the Working Group to focus on this aspect. Some delegations made specific reference to certain crimes in this context, including genocide, crimes against humanity, war crimes, torture and slavery. The view was also expressed that only core crimes should be identified and enumerated; there should be no effort to seek consensus on a comprehensive list of crimes as the typology of crimes is subject to evolution. Some other delegations cautioned against an unwarranted expansion of the list of crimes subject to universal jurisdiction.

As regards the application of the principle, several delegations condemned the selective and arbitrary application of the principle and its possible politicization. Certain delegations expressed the view that the disorderly application of universal jurisdiction has had and continued to risk detrimental implications for international relations. The importance of respecting principles of international law enshrined in the Charter of the United Nations, including the sovereign equality of States, as well as the political independence and non-interference in the internal affairs of other States, was also stressed. It was suggested that it was necessary to address the incongruity that currently existed amongst the various national approaches to universal jurisdiction, and some delegations underlined the importance of establishing conditions for the principle's application. Certain delegations also indicated that the primary responsibility for investigating and prosecuting serious

international crimes should always rest with the State in which the conduct occurred, and stressed that universal jurisdiction provided a complementary mechanism to ensure that accused persons were held accountable where the territorial State was unable or unwilling to exercise jurisdiction.

On the future consideration of the agenda item, some delegations acknowledged the beneficial aspects of the establishment of the Working Group of the Sixth Committee on the topic. Some delegations indicated that the Committee was at the stage where more dialogue within the Working Group was required, and issues on which there was common understanding should be identified. Certain delegations reaffirmed the need for the Working Group to adopt a cautious step-by-step approach. In addition, some delegations encouraged flexibility during the consideration by the Working Group of the issue of immunities, in particular on the question of whether the nature of a crime affected immunity. The view was also expressed that the item, given its legal complexity, should appropriately be handled by the International Law Commission. In terms of timing, some delegations indicated that the item should be referred to the Commission presently, while some other delegations suggested that such a referral should depend on the progress of the Working Group. Several delegations also welcomed the fact the Commission had at its most recent session given priority to related topics, namely, the immunity of State officials from foreign criminal jurisdiction and the obligation to extradite or prosecute.

At the 24th meeting, on 9 November 2012, the representative of the Democratic Republic of the Congo, on behalf of the Bureau, introduced a draft resolution entitled "The scope and application of the principle of universal jurisdiction".[700] At the 25th meeting, on 16 November 2012, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

In resolution 67/98, the General Assembly invited Member States and relevant observers, as appropriate, to submit, before 30 April 2013, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties, their domestic legal rules and judicial practice. The Assembly further requested the Secretary-General to prepare and submit to it, at its sixty-eighth session, a report based on such information and observations. Moreover the Assembly decided that the Sixth Committee should continue its consideration of the item, without prejudice to the consideration of the topic and related issues in other forums of the United Nations, and that a working group of the Sixth Committee be established at the sixty-eighth session to continue to undertake a thorough discussion of the topic.

(*h*) Measures to eliminate international terrorism

This item was included in the agenda of the twenty-seventh session of the General Assembly, in 1972, further to an initiative of the Secretary-General.[701] At that session, the

[700] A/C.6/67/L.16.

[701] A/8791 and Add.1 and Add.1/Corr.1

Assembly decided to establish the Ad Hoc Committee on International Terrorism, consisting of 35 members.[702]

At its fifty-first session, the General Assembly established an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.[703] Through the work of the Committee, the Assembly has thus far adopted three counter-terrorism instruments. The Committee is currently engaged in discussions on the elaboration of a draft comprehensive convention on international terrorism. Pursuant to General Assembly resolution 66/105 of 9 December 2011, the Ad Hoc Committee did not convene in 2012.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 1st to 3rd and 23rd to 25th meetings, on 8 and 9 October and 6, 9 and 16 November 2012.[704] For the consideration of the item, the Committee had before it the reports of the Secretary-General on measures to eliminate international terrorism[705] and on technical assistance for implementing international conventions and protocols related to terrorism.[706]

At its 1st meeting, on 8 October 2012, the Sixth Committee established a working group to continue to carry out the mandate of the Ad Hoc Committee established by General Assembly resolution 51/210, as contained in resolution 66/105. The Working Group held three meetings, on 22 and 24 October and on 6 November 2012, and informal consultations on 22 and 24 October and on 6 November 2012. At the 23rd meeting, on 6 November 2012, the Committee received an oral report of the Chair on the work of the Working Group and on the results of the informal consultations which were held during the current session.[707]

In the general debate on this item, delegations reaffirmed that terrorism represented one of the most serious threats to peace and security, with some highlighting further that it undermined democracy, peace, freedom and human rights. Delegations reiterated their firm condemnation of terrorism in all its forms and manifestations, as well as their commitment to contribute to the international fight against terrorism. It was underlined that no cause could justify terrorism, and several delegations stressed that it should not be associated with any religion, culture, ethnicity, race, nationality or civilization. Some delegations deplored selectivity and the use of double standards in countering terrorism. Views were also expressed that counter-terrorism policies must strike a balance between security considerations and respect for human rights. Thus, delegations underscored the need for

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[702] General Assembly resolution 3034 (XXVII) of 18 December 1972.

[703] General Assembly resolution 51/210 of 16 January 1997.

[704] For the report of the Sixth Committee, see A/67/473. For the summary records, see A/C.6/67/SR.1-3 and 23–25.

[705] A/67/162 and Add.1.

[706] A/67/158.

[707] A/C.6/67/SR.23.

strict observance of the Charter of the United Nations and international law, including human rights, humanitarian and refugee law, as well as the rule of law in countering terrorism. Some delegations pointed to the need for a clear definition of terrorism and echoed the need to distinguish it from the exercise of the right to self-determination of peoples under colonial, alien domination or foreign occupation.

The debate also built upon the deliberations that took place during the third biennial review[708] of the United Nations Global Counter Terrorism Strategy,[709] held in June 2012, as well as the high-level meeting on countering nuclear terrorism, with a focus on strengthening the legal framework, which was convened by the Secretary-General on 28 September 2012. Referring to these meetings, delegations acknowledged the achievements of the international community in coming together to counter terrorism, but also recognized that more work needed to be done given the persistence of the problem.

With specific reference to the high-level meeting on countering nuclear terrorism, with a focus on strengthening the legal framework, several delegations commented that it represented an important opportunity for States to discuss the grave threat to international peace and security posed by nuclear terrorism. To build on the meeting, delegations highlighted the need for increased ratification of the various universal counter-terrorism instruments. The importance of implementing those instruments at the national level was also emphasized. Some delegations also stressed the importance of instituting an extradite or prosecution regime to facilitate prosecutions of terrorist acts and put an end to impunity. Some other delegations underscored the importance of commitments made under the Treaty on the Non-Proliferation of Nuclear Weapons[710] and the action plans agreed upon during the review processes of that instrument.

Some delegations stated that countering terrorism should not come solely through war or military means; it was asserted that such an approach did not achieve lasting security, peace or prosperity. It was also noted that terrorism should not be perpetrated by States against people within their own territory. The issue of State-sponsored terrorism was also highlighted. It was stated further that many terrorism threats emanated from States that provide sanctuaries to terrorist groups for operational planning, recruiting, training and financing. The need to eliminate such safe havens was emphasized.

Delegations underscored the multilateral approaches and central role of the United Nations in counter-terrorism efforts and reiterated their support for the United Nations Global Counter-Terrorism Strategy, calling for its full implementation in a transparent and comprehensive manner. The Counter-Terrorism Implementation Task Force (CTITF) was called upon to strengthen its role in capacity-building and coordination. It was also encouraged to enhance its activities aimed at a balanced implementation of the four pillars of the Strategy—affording each pillar equal attention—and to do so in complete cooperation and with the full participation of States. While welcoming the coordinating role of the United Nations, some delegations also reaffirmed the primary responsibility of States in the implementation of the Strategy. The important role of regional and subregional organizations was also highlighted.

[708] General Assembly resolution 66/282 of 29 June 2012.

[709] General Assembly resolution 60/288 of 8 September 2006.

[710] United Nations, *Treaty Series*, vol. 729, p. 161.

Some delegations welcomed the creation of the United Nations Centre for Counter-Terrorism within the CTITF to foster international cooperation, to strengthen the Organization's capacity-building efforts and to help build a database of best counter-terrorism practices. Delegations emphasized the importance of supporting the Centre so that it could realize its full potential.

Some delegations also expressed support for the proposed creation of a United Nations Coordinator for Counter-Terrorism. It was stated that the position would enhance United Nations counter-terrorism efforts both internally and externally and delegations looked forward to further development on the issue. Caution was urged to avoid duplication and to ensure that the effectiveness of counter-terrorism measures was maintained. It was also pointed out that any creation of such a post should be within existing resources.

The continuing focused work of the Security Council in countering terrorism, as well as the improvements made by the Council in the implementation of sanctions regimes, were generally welcomed. References were made to Security Council resolutions 1988 (2011) and 1989 (2011), which split the sanctions regime against Al Qaeda and the Taliban imposed under Security Council resolution 1267 (1999), greater involvement in listing and delisting procedures, clearer timeframes, and the strengthened role of the Ombudsperson. It was again acknowledged that there had been important developments particularly relating to due process standards in the 1267/1989 regime. The strengthened role of the Ombudsperson during the renewal process of the relevant mandate was supported by some delegations. The Council was also encouraged to continue to improve its working methods with regard to sanctions, to ensure that its sanctions regimes were independent and impartial, and that its decisions were in accordance with due process standards and the rule of law.

The work of the Security Council in this context was also subject to some criticism. It was suggested that Security Council resolutions had been abused, and the use of counter-terrorism as a pretext for politically motivated acts was condemned. It was also noted by some delegations that the listing and delisting process was still based primarily on political considerations rather than a judicial process.

Delegations also welcomed the work of the Counter Terrorism Committee and the Counter-Terrorism Executive Directorate (CTED). In this connection, delegations stressed the importance of Security Council resolution 1373 (2001) in the international efforts to counter terrorism. Some delegations also highlighted the efforts of the Committee established pursuant to Security Council resolution 1540 (2004) in countering the threat of terrorists and other non-State actors gaining access to nuclear, radiological, and biological weapons, as well as their means of delivery.

Some delegations extolled the role played by the United Nations Office on Drugs and Crime (UNODC), and in particular the Terrorism Prevention Branch, in capacity building and the delivery of technical assistance in the area of counter-terrorism. The work of the UNODC in drafting model laws and supporting the ratification and implementation by States of universal counter-terrorism instruments was specifically welcomed. The work of the United Nations Interregional Crime and Justice Research Institute (UNICRI) in promoting national capacity was similarly welcomed.

Several delegations highlighted the importance of developing partnerships to promote coordination and the exchange of information among States, civil society and the private sector, as well as with regional organizations and research centres.

Furthermore, several delegations stressed that the fight against terrorism included the need to give proper support to and protection for victims of terrorist attacks. In this regard, the important work of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was recalled.

Several delegations underscored the importance of dialogue and interaction among various religions and cultures. Such approaches would broaden mutual understanding and foster a culture of tolerance. Attention was drawn to the need for the United Nations to work further on countering radicalization and extremism, including through educational initiatives and forums for interreligious and intercultural dialogue. The importance of enhancing the inclusion of moderate voices was also stressed.

A number of delegations alluded to the need to address the root causes of terrorism and to prevent and eliminate the conditions conducive to its emergence and spread, particularly polarization and social injustice. It was suggested that the symptoms and root causes of terrorism should be addressed simultaneously, and that mutual respect, tolerance and education should be promoted as methods to counter terrorism.

The threat of homegrown terrorism, self-radicalization and the spread of extremist ideologies among young people were also identified as vital issues for consideration by the international community. In this regard, some delegations emphasized the importance of rehabilitation and development programmes as means to address the terrorism at its source, in particular by enabling reintegration and preventing recidivism. More generally, the development of economic, social, and educational sectors was also heralded as a method to combat extremism and terrorism.

Some delegations drew attention to the possible acquisition by terrorists of weapons of mass destruction. Terrorists' use of information and communication technologies to raise funds and facilitate recruitment was also highlighted. Delegations shared their concern about the close links between terrorism and transnational organized crime, including money-laundering, arms-smuggling, trafficking in illicit drugs, piracy and activities of armed separatist groups. Cyber-terrorism was also highlighted as a matter of international concern requiring concerted action. Delegations emphasized the importance of dialogue on these important issues. It was also noted that a lack of adequate means had plagued the capacity of certain States to address terrorist activity when such sophisticated methods were employed.

On the financing of terrorism, some delegations identified the increase in incidents of kidnapping and hostage-taking with the aim of raising funds for terrorist purposes as a specific area of concern, and urged United Nations action, including on the legal aspects of the issue. Some delegations highlighted the importance of cooperating with international partners, including the Financial Action Task Force, in order to leverage expertise and technical assistance to prevent money laundering and the transmission of funds to terrorist actors.

Some delegations condemned acts against religious beliefs, as well as violence in the name of religion and the use of religion to incite violence. In this regard, some delegations condemned all forms of incitement that were intended to provoke violent responses.

Several delegations also commented on the draft comprehensive convention on international terrorism and on the proposal of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

At the 24th meeting, on 9 November 2012, the representative of Canada, on behalf of the Bureau, introduced a draft resolution entitled "Measures to eliminate international terrorism".[711] At the 25th meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

In resolution 67/99, the General Assembly, *inter alia*, called upon all Member States, the United Nations and other appropriate international, regional and subregional organizations to implement the United Nations Global Counter-Terrorism Strategy,[712] as well as the resolutions relating to the first, second and third biennial reviews[713] of the Strategy, in all its aspects at the international, regional, subregional and national levels without delay, including by mobilizing resources and expertise. It noted that the United Nations Counter-Terrorism Centre had commenced its activities within the Counter-Terrorism Implementation Task Force in New York and that the Centre was performing its duties in supporting the implementation of the Strategy, and encouraged all Member States to collaborate with the Centre and to contribute to the implementation of its activities within the Task Force.

The Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 should meet from 8 to 12 April 2013 in order to, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism and to discuss the item included in its agenda by Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations. It also decided that future meetings of the Ad Hoc Committee would be decided upon subject to substantive progress in its work. The Assembly further decided to include the in the provisional agenda of its sixty-eighth session.

(*i*) Revitalization of the work of the General Assembly

This item, which was included in the agenda of the forty-sixth session of the General Assembly in 1991, had originally been proposed for inclusion in the draft agenda of that session by the President of the Assembly at its forty-fifth session.[714]

The General Assembly considered the question at its forty-sixth to forty-eighth, fifty-second to fifty-third and fifty-fifth[715] to sixty-sixth sessions.

At its 2nd plenary meeting, on 21 September 2012, the General Assembly, on the recommendation of the General Committee of the General Assembly decided to allocate the

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[711] A/C.6/67/L.12.

[712] General Assembly resolution 60/288 of 8 September 2006.

[713] General Assembly resolutions 62/272 of 5 September 2008, 64/297 of 8 September 2010 and 66/282 of 29 June 2012.

[714] See General Assembly decision 45/461 of 16 December 1991.

[715] At its fifty-fourth session, the General Assembly decided to defer consideration of them item (General Assembly decision 54/491).

item to all the Main Committees for the sole purpose of considering and taking action on their respective tentative programmes of work for the sixty-eighth session of the General Assembly.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 25th meeting, on 16 November 2012.[716]

At the 25th meeting, on 16 November, the Chair introduced a draft decision containing the provisional programme of work of the Committee for the sixty-eighth session of the General Assembly, as proposed by the Bureau.[717] At the same meeting, the Committee adopted draft decision A/C.6/67/L.18.

(ii) *General Assembly*

In its decision 67/523, the General Assembly noted the decision of the Sixth Committee to adopt the provisional programme of work for the sixty-eighth session of the General Assembly, as proposed by the Bureau.

(*j*) Administration of justice at the United Nations

The General Assembly considered the item at its fifty-fifth to fifty-seventh sessions, at its fifty-ninth session and at its sixty-first to sixty-sixth sessions, in the framework of both the Fifth and Sixth Committee, with the aim of introducing a new system for handling internal disputes and disciplinary matters in the United Nations. At its sixty-third session, the General Assembly adopted the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. Outstanding legal matters have been considered by the Sixth Committee in the ensuing years. These matters included, *inter alia*, the rules of procedure of the two tribunals, the scope *ratione personae* of the administration of justice system and the scope and functioning of the Office of Staff Legal Assistance (OSLA).

(i) *Sixth Committee*

The Sixth Committee considered the item at its 10th and 14th meetings, on 15 and 19 October 2012, respectively.[718] Most delegations welcomed the report of the Secretary-General on the Activities of the Office of the United Nations Ombudsman and Mediation Services,[719] the report of the Secretary-General on the Administration of justice at the United Nations,[720] the report of the Secretary-General on Amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals

[716] For the report of the Sixth Committee, see A/67/474. For the summary records, see A/C.6/67/SR.25.

[717] A/C.6/67/L.18.

[718] For the summary records, see A/C.6/67/SR.10 and 14.

[719] A/67/172.

[720] A/67/265 and Corr.1.

Tribunal,[721] as well as the report of the Internal Justice Council on the Administration of justice at the United Nations.[722] They reiterated that they attached great importance to the establishment and functioning of the system of administration of justice, and stressed that the evolution of the new system should continue to be consistent with a number of fundamental principles of law, including due process, the right to an effective remedy and equal access to justice.

Some delegations stressed the importance of continued coordination and cooperation with the Fifth Committee to ensure an appropriate division of labour and avoid overlaps or encroachment of mandates. The professionalism and productivity of the new system were commended.

With respect to the outstanding issues regarding the scope of the system, some delegations indicated their willingness to analyze and discuss the proposal contained in annex IV of the report of the Secretary-General[723] to develop expedited arbitration procedures for consultants and individual contractors, as well as the measures proposed for other non-staff personnel not covered under the existing dispute resolutions mechanisms. It was noted that such a procedure for consultants and individual contractors could be a pragmatic and potentially fair solution for such personnel. Some other delegations indicated their preference for a differentiated system that would provide an adequate, effective and appropriate remedy. The view was also expressed that this subject required further study.

Some delegations indicated their willingness to discuss a code of conduct for legal representatives before the two tribunals. While support was expressed for the creation of such a code, it was also stated that this issue deserved to be further discussed.

The view was expressed that all persons working for the United Nations, irrespective of status, should have access to an independent body that can address complaints in an effective and efficient manner. In this regard, however, it was observed that any solution to the issue of non-staff personnel must comply with existing obligations of the United Nations, including the Convention on the Privileges and Immunities of the United Nations, 1946[724] and agreements that the Organization has concluded with host States.

Several delegations addressed the code of conduct of judges that had been recently approved by the General Assembly and had become binding.[725] In that regard, some delegations welcomed the proposal of the Internal Justice Council for a procedure for enforcing the code of conduct, and indicated that they would be prepared to discuss the proposals contained in the report of the Secretary-General for addressing possible misconduct of judges.

Most delegations expressed their support for OSLA. Some delegations praised the Office for the vital task it performed, but also expressed their belief that further proposals for a staff-funded scheme should continue to be explored. In that regard, some delegations took note of the proposals contained in the report of the Secretary General (annex II).[726] A

[721] A/67/349.

[722] A/67/98.

[723] A/67/265.

[724] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

[725] General Assembly resolution 66/106 of 9 December 2011.

[726] A/67/265.

reference was made to the advantages of a staff-funded OSLA scheme, as described in the report of the Secretary-General.

Some delegations indicated that they were looking forward to holding an exchange of views on the proposed amendments to the rules of procedure of the Dispute Tribunal and of the Appeals Tribunal.

Several delegations also stressed the important role that the Internal Justice Council had played in the system to help ensure its independence, professionalism and accountability. Some delegations encouraged the Council to continue to provide its views and contributions on the implementation of the system within the purview of its mandate. It was stated that the Council was an important component of the system as it promoted judicial independence. With respect to the selection of judges, the view was expressed that experienced judges would impact positively on the system generally, and a call was made for transparency in the selection of judges.

Noting the backlog that remained from the prior system, the point was made that the expedited resolution of conflict was critical regardless of the system of justice. It was suggested that the amount of pending cases could have a negative impact on the work of the tribunals. Some delegations indicated that they would prefer greater recourse to the informal system, and encouraged the implementation of incentives intended to encourage more recourse to informal resolution. In that regard, attention was drawn to the importance of the Management Evaluation Unit, a mechanism which presented an opportunity to prevent unnecessary litigation before the Dispute Tribunal; the percentage of cases received and closed by the Unit in 2011 was welcomed.

Some delegations requested that the Secretary-General ensure that the structure of the Office of the Ombudsman and Mediation Services reflects the responsibility of the Ombudsman for the oversight of the entire integrated office. Similarly, some other delegations welcomed the important work of the Office of the Ombudsman and Mediation Services, and expressed support for its efforts in advancing and encouraging the use of informal conflict resolution. It was suggested that the mandate of the Ombudsman be expanded to give a broader category of personnel access to the informal system.

With respect to the sharing of information related to judicial cases, a call was made for consistency of communication in order to inform staff and management regarding the various dispute resolution mechanisms and avenues for redress; such communication would increase awareness and thereby strengthen the administration of justice.

On the subject of punitive damage awards, it was suggested that, in light of the relatively low number of responses received by the Secretary-General on the practice of national legal systems, additional information would be useful.

At its 14th meeting, on 19 October 2012, the Sixth Committee decided that its Chairman would address a letter to the President of the General Assembly, drawing his attention to certain specific issues relating to the legal aspects of the reports submitted under the item as discussed in the Sixth Committee. The letter would contain a request that it be brought to the attention of the Chair of the Fifth Committee and circulated as a document of the General Assembly.[727]

[727] The letter was circulated under document A/C.5/67/9 of 23 October 2012.

(ii) *General Assembly*

On 24 December 2012, the General Assembly adopted resolution 67/241 entitled "Administration of justice at the United Nations", without a vote, on the recommendation of the Fifth Committee. In the said resolution, the Assembly, *inter alia*, noted with appreciation the achievements produced since the inception of the new system of administration of justice, regarding both the disposal of the backlog and the addressing of new cases; acknowledged the evolving nature of the new system of administration of justice and the need to carefully monitor its implementation to ensure that it remained within the parameters set out by the General Assembly; and emphasized the importance of the principle of judicial independence in the system of administration of justice. In this context, the Assembly stressed the importance of ensuring access for all staff members to the new system of administration of justice, regardless of their duty station. It requested the Secretary-General to submit to the General Assembly, for consideration at its sixty-eighth session, a proposal for conducting an interim independent assessment of the formal system of administration of justice.

The Assembly recognized the informal system of administration of justice to be an efficient and effective option for staff who seek redress of grievance and for managers to participate in. It further stressed the importance of developing a culture of dialogue and amicable resolution of disputes through the informal system, and requested the Secretary-General to propose, at the main part of the sixty-eighth session of the General Assembly, measures to encourage informal dispute resolution.

With regard to the formal system of administration of justice, the General Assembly approved the amendments to article 9 of the rules of procedure of the Appeals Tribunal contained in annex II to the report of the Secretary-General on amendments to the rules of procedure of the Dispute Tribunal and the Appeals Tribunal.[728] It stressed the need to ensure that all individuals acting as legal representatives, whether staff members or external counsel, were subject to the same standards of professional conduct applicable in the United Nations system, and requested the Secretary-General, in consultation with the Internal Justice Council and other relevant bodies, to prepare a code of conduct for legal representatives who are external individuals and not staff members, and to report thereon to the General Assembly at the main part of its sixty-eighth session. In addition, the Assembly noted the importance of ensuring that all categories of personnel have access to recourse mechanisms to resolve disputes and took note of the proposed expedited arbitration procedures for consultants and individual contractors developed by the Secretary-General contained in annex IV to his report on administration of justice at the United Nations[729] and decided to remain seized of the matter.

The Assembly requested the Secretary-General to provide the various reports requested in the resolution in a single comprehensive report on administration of justice to be submitted to the General Assembly at the main part of its sixty-eighth session. The General Assembly invited the Sixth Committee to consider the legal aspects of the comprehensive report to be submitted by the Secretary-General, without prejudice to the role of the Fifth

[728] A/67/349.

[729] A/67/265.

Committee as the Main Committee entrusted with responsibility for administrative and budgetary matters.

(*k*) Report of the Committee on Relations with the Host Country

(i) *Committee on Relations with the Host Country*

The Committee on Relations with the Host Country was established by the General Assembly at its twenty-sixth session, in 1971.[730] The Committee is currently composed of the following 19 Member States: Bulgaria, Canada, China, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, Libya, Malaysia, Mali, Russian Federation, Senegal, Spain, United Kingdom and United States.

In 2012, the Committee held the following meetings: the 255th meeting, on 12 January 2012; the 256th meeting, on 30 April 2012; the 257th meeting, on 30 July 2012; the 258th meeting, on 11 October 2012; and the 259th meeting, on 5 November 2012. During its meetings, the Committee considered three main topics, namely (i) entry visas issued by the host country, (ii) question of the security of missions and the safety of their personnel, and (iii) host country activities: activities to assist members of the United Nations community. At its 259th meeting, the Committee approved a number of recommendations and conclusions, which are contained in chapter IV of its report.[731]

(ii) *Sixth Committee*

The Sixth Committee considered this item at its 25th meeting, on 16 November 2012.[732] The Chair of the Committee on Relations with the Host Country introduced the report of that Committee.[733]

At the 25th meeting, the representative of Cyprus, on behalf of a number of Member States, introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country".[734] At the same meeting, the Committee adopted the draft resolution without a vote.

(iii) *General Assembly*

In resolution 67/100, the General Assembly, *inter alia*, endorsed the recommendations and conclusions of the Committee on Relations with the Host Country. It requested the host country 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, and urged the host country to continue to take appropriate action with a view to maintaining respect for diplomatic privileges and immunities and if violations occur to ensure

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[730] General Assembly resolution 2819 (XXVI) of 15 December 1971.

[731] *Official records of the General Assembly, Sixty-seventh session, Supplement No. 26* (A/67/26).

[732] For the report of the Sixth Committee, see A/67/477. For the summary records, see A/C.6/67/SR.25.

[733] *Official records of the General Assembly, Sixty-seventh session, Supplement No. 26* (A/67/26).

[734] A/C.6/67/L.19.

that such cases are properly investigated and remedied, in accordance with applicable law. It also requested the host country to consider removing the remaining travel restrictions imposed by it on staff of certain missions and staff members of the Secretariat of certain nationalities. The Assembly noted the concerns expressed by some delegations concerning the denial and delay of entry visas to representatives of Member States and noted with concern the difficulties that continued to be experienced by some Permanent Missions in obtaining suitable banking services. In this regard, it welcomed the continued efforts of the host country to facilitate the opening of bank accounts for those Permanent Missions. The Assembly requested the Secretary-General to remain actively engaged in all aspects of the relations of the United Nations with the host country, and requested that the Committee on Relations with the Host Country continue its work in conformity with General Assembly resolution 2819 (XXVI).

(*l*) Observer Status in the General Assembly

(i) *Sixth Committee*

The Committee considered requests for observer status in the General Assembly for the Cooperation Council of Turkic-speaking States, the International Conference of Asian Political Parties, Andean Development Corporation, the International Chamber of Commerce and the European Organization for Nuclear Research, at its 11th, 24th and 25th meetings, on 16 October and on 9 and 16 November 2012.[735]

(ii) *General Assembly*

In its resolutions 67/101 and 67/102, the General Assembly granted observer status to the Andean Development Corporation and the European Organization for Nuclear Research, respectively. In its decisions 67/525, 67/526 and 67/527, the General Assembly decided to defer decision on the request for observer status for the Cooperation Council of Turkic-speaking States, the International Conference of Asian Political Parties and the International Chamber of Commerce to its sixty-eighth session, respectively.

[735] For the reports of the Sixth Committee, see A/67/478, A/67/479, A/67/480, A/67/481 and A/67/556, respectively. For the summary records, see A/C.6/67/SR.11, 24 and 25.

17. *Ad hoc* international criminal tribunals[736]

(*a*) Organization of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda

(i) *Organization of the International Criminal Tribunal for the former Yugoslavia*[737]

Judge Theodor Meron (United States) and Judge Carmel Agius (Malta) continued to act as President and Vice-President of the Tribunal, respectively, throughout 2012.

By Security Council resolution 2081 (2012) of 17 December 2012, adopted while acting under Chapter VII of the Charter of the United Nations, and by General Assembly decision 67/417 of 24 December 2012, the term of office of the following permanent judges at the Tribunal, who were members of the Appeals Chamber, was extended until 31 December 2013 or until the completion of the cases to which they were assigned, if sooner: Carmel Agius (Malta), Liu Daqun (China), Theodor Meron (United States), Fausto Pocar (Italy) and Patrick Robinson (Jamaica). The term of office of the following permanent judges at the Tribunal, who were members of the Trial Chambers, was also extended until 31 December 2013 or until the completion of the cases to which they were assigned, if sooner: Jean-Claude Antonetti (France), Guy Delvoie (Belgium), Burton Hall (Bahamas), Christoph Flügge (Germany), O-Gon Kwon (South Korea), Bakone Justice Moloto (South Africa), Howard Morrison (United Kingdom) and Alphons Orie (Netherlands). Furthermore, the term of office of the following *ad litem* judges at the Tribunal, who were members of the Trial Chambers was extended: Elizabeth Gwaunza (Zimbabwe), Michèle Picard (France), Árpád Prandler (Hungary) and Stefan Trechsel (Switzerland), until 1 June 2013 or until the completion of the cases to which they were assigned, if sooner; and Frederik Harhoff (Denmark), Melville Baird (Trinidad and Tobago), Flavia Lattanzi (Italy) and Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), until 31 December 2013 or until the completion of the cases to which they were assigned.

At the end of 2012, the Chambers were composed of 18 permanent judges, including five permanent judges from the International Criminal Tribunal for Rwanda serving in the Tribunal's Appeals Chamber, and nine *ad litem* judges.

The 18 permanent judges of the Tribunal were as follows: Theodor Meron (President, United States), Carmel Agius (Vice-President, Malta), Jean-Claude Antonetti (France), Guy Delvoie (Belgium), Christoph Flügge (Germany), Mehmet Güney (Turkey), Burton Hall (Bahamas), Khalida Rachid Khan (Pakistan), O-Gon Kwon (Republic of Korea), Liu

[736] This section covers the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Residual Mechanism for Criminal Tribunals, established by Security Council resolutions 827 (1993) of 25 May 1993, 955 (1994) of 8 November 1994, and 1966 (2010) of 22 December 2010, respectively. Further information regarding the judgments of the International Criminal Tribunal for Yugoslavia and International Criminal Tribunal for Rwanda is contained in chapter VII of this publication.

[737] For more information, see, for the period 1 August 2011 to 31 July 2012, Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (A/67/214–S/2012/592). At the time of publication, the report covering the period 1 August 2012 to 31 July 2013 was forthcoming.

Daqun (China), Bakone Justice Moloto (South Africa), Howard Morrison (United Kingdom), Alphons Orie (Netherlands), Fausto Pocar (Italy), Arlette Ramaroson (Madagascar), Patrick Robinson (Jamaica), Bakhtiyar Tuzmukhamedov (Russian Federation) and Andrésia Vaz (Senegal).

At the end of 2012, the *ad litem* judges of the Tribunal were as follows: Melville Baird (Trinidad and Tobago), Elizabeth Gwaunza (Zimbabwe), Frederik Harhoff (Denmark), Flavia Lattanzi (Italy), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Prisca Matimba Nyambe (Zambia),[738] Michèle Picard (France), Árpád Prandler (Hungary) and Stefan Trechsel (Switzerland).

(ii) *Organization of the International Criminal Tribunal for Rwanda*[739]

Judge Khalida Rachid Khan (Pakistan) and Judge Vagn Joensen (Denmark) continued to act as President and Vice-President of the Tribunal, respectively, until February 2012. Judge Vagn Joensen (Denmark) and Judge Florence Rita Arrey (Cameroon) were elected President and Vice-President of the Tribunal, respectively, on 14 February 2012.

In resolution 2054 (2012) of 29 June 2012, acting under Chapter VII of the Charter of the United Nations, the Security Council decided that, notwithstanding the expiry of their term of office on 30 June 2012, Judge William H. Sekule (United Republic of Tanzania), Judge Solomy Balungi Bossa (Uganda) and Judge Mparany Mamy Richard Rajohnson (Madagascar) could continue, on an exceptional basis, to serve at the Tribunal until 31 December 2012 or until the completion of the *Ngirabatware* case which they began before the expiry of their term of office, while taking note of the intention of the Tribunal to complete the *Ngirabatware* case by 31 December 2012. The Council also took note of the intention of the Tribunal to complete all remaining judicial work by 31 December 2014 and decided, bearing in mind the expiry of his term of office on 30 June 2012, to extend the term of office of Judge Vagn Joensen (Denmark), on an exceptional basis, until 31 December 2014 so that he could continue to perform the functions required of him as trial judge and President of the Tribunal, to complete the work of the Tribunal and expressed its intention to review this decision in June 2013.

By Security Council resolution 2080 (2012) of 12 December 2012, adopted while acting under Chapter VII of the Charter of the United Nations, and by General Assembly decision 67/416 of 24 December 2012,the term of office of the following permanent judges at the Tribunal, who were members of the Appeals Chamber, was extended until 31 December 2014 or until the completion of the cases to which they were assigned, if sooner: Mehmet Güney (Turkey), Khalida Rachid Khan (Pakistan), Arlette Ramaroson (Madagascar), Bakhtiyar Tuzmukhamedov (Russian Federation) and Andrésia Vaz (Senegal).

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[738] Judge Prisca Matimba Nyambe (Zambia) ended her term of office on 18 December 2012.

[739] For more information about the Tribunal's activities, see, for the period 1 July 2011 to 30 June 2012, Seventeenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (A/67/253–S/2012/594). At the time of publication, the report covering the period 1 July 2012 to 30 June 2013 was forthcoming.

At the end of 2012, the permanent judges were as follows: Vagn Joensen (President, Denmark), Florence Rita Arrey (Vice-President, Cameroon), Carmel Agius (Malta), Mehmet Güney (Turkey), Khalida Rachid Khan (Pakistan), Liu Daqun (China), Theodor Meron (United States), Fausto Pocar (Italy), Arlette Ramaroson (Madagascar), Patrick Robinson (Jamaica), William H. Sekule (United Republic of Tanzania), Bakhtiyar Tuzmukhamedov (Russian Federation) and Andrésia Vaz (Senegal).

At the end of 2012, the *ad litem* judges were as follows: Solomy Balungi Bossa (Uganda) and Mparany Mamy Richard Rajohnson (Madagascar).

(iii) *Composition of the Appeals Chamber*[740]

At the end of 2012, the composition of the Appeals Chamber was as follows: Theodor Meron (presiding, United States), Carmel Agius (Malta), Mehmet Güney (Turkey), Khalida Rachid Khan (Pakistan), Liu Daqun (China), Fausto Pocar (Italy), Arlette Ramaroson (Madagascar), Patrick Robinson (Jamaica), Bakhtiyar Tuzmukhamedov (Russian Federation) and Andrésia Vaz (Senegal).

(iv) *Organization of the International Residual Mechanism for Criminal Tribunals*

By resolution 1966 (2010) of 22 December 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to establish the International Residual Mechanism for Criminal Tribunals ("the Mechanism") with two branches, the branch for the ICTR which commenced functioning on 1 July 2012 and the branch for the ICTY which should commence functioning on 1 July 2013, to carry out a number of essential functions of the Tribunals after their closure. By the same resolution, the Security Council also decided to adopt that Statute of the Mechanism, contained in the annex.

On 20 December 2011, the General Assembly elected the first 25 judges to serve on the roster of the Mechanism. Pursuant to article 8 of the Statute of the Mechanism, the judges serve both branches of the Mechanism and would travel to Arusha or to The Hague only when necessary. As of 18 May 2012, all 25 judges on the roster of the Mechanism had been sworn in. At the end of 2012, the roster of judges of the Mechanism was as follows: Theodor Meron (President, United States); Carmel Agius (Malta); Aydin Sefa Akay (Turkey); Jean-Claude Antonetti (France); Florence Rita Arrey (Cameroon); Solomy Balungi Bossa (Uganda); Ivo Nelson de Caires Batista Rosa (Portugal); José Ricardo de Prada Solaesa (Spain); Ben Emmerson (United Kingdom); Christoph Flügge (Germany); Susana Gatti Santana (Uruguay); Burton Hall (Bahamas); Vagn Joensen (Denmark); Gberdao Gustave Kam (Burkina Faso); Liu Daqun (China); Joseph E. Chiondo Masanche (United Republic of Tanzania); Bakone Justice Moloto (South Africa); Lee G. Muthoga (Kenya); Aminatta Lois Runeni N'gum (Gambia); Prisca Matimba Nyambe (Zambia); Alphons Orie (Netherlands); Seon Ki Park (Republic of Korea); Mparany Mamy Richard Rajohnson (Madagascar); Patrick Robinson (Jamaica); and William H. Sekule (United Republic of Tanzania).

[740] The Appeals Chamber consists of seven permanent Judges, five of whom are permanent judges of the ICTY and two of whom are permanent judges of the International Criminal Tribunal for Rwanda (ICTR). These seven judges constitute the Appeals Chamber of the ICTR and the ICTY.

In a letter dated 23 February 2012 from the Secretary-General addressed to the President of the Security Council,[741] the Secretary-General informed the Council of his intention to appoint Judge Theodor Meron (United States) as the President of the Mechanism and to nominate Mr. Hassan Bubacar Jallow (Gambia) for appointment as Prosecutor of the Mechanism. By resolution 2038 (2012) of 29 February 2012, the Security Council decided to appoint Mr. Bubacar Jallow as Prosecutor of the Mechanism with effect from 1 March 2012 for a term of four years.

(*b*) General Assembly

On 24 December 2012, the General Assembly adopted, on the recommendation of the Fifth Committee, three resolutions concerning the financing of the international tribunals and the Mechanism, namely: (i) resolution 67/242 entitled "Financing 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";[742] (ii) resolution 67/243 entitled "Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991";[743] and resolution 67/244 entitled "Financing of the International Residual Mechanism for Criminal Tribunals".[744] In resolution 67/243, the Assembly, *inter alia*, requested the Secretary-General to ensure that the ICTY prepares and presents, as appropriate, by 15 April 2013, a consolidated action plan to manage the completion of its work and the transition to the Mechanism by the end of 2014.

On 15 October 2012, the General Assembly adopted the following two decisions taking note of the annual reports of the ICTR[745] and the ICTY[746], respectively: (i) decision 67/507 entitled "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"; and (ii) decision 67/508 entitled "Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991".

(*c*) Security Council

In resolutions 2054 (2012), 2080 (2012) and 2081 (2012), the Security Council, *inter alia*, recalled again its resolution 1966 (2010) by which it requested the ICTY and the

[741] S/2012/112; see also S/2012/113.

[742] Adopted without a vote.

[743] Adopted with a recorded vote of 139 in favour to none, with 12 abstentions.

[744] Adopted without a vote.

[745] A/67/253–S/2012/594.

[746] A/67/214-S/2012/592.

ICTR to take all possible measures to expeditiously complete all their remaining work no later than 31 December 2014, prepare their closure and ensure a smooth transition to the Mechanism. In the same resolutions, the Council took note of the assessments by the Tribunals in their completion strategy reports.[747]

In resolutions 2054 (2012) and 2080 (2012), the Security Council, acting under Chapter VII of the Charter of the United Nations, *inter alia*, urged all States, especially States where fugitives were suspected to be at large, to intensify further their cooperation with and render all necessary assistance to the international tribunals, in particular to achieve the arrest and surrender of all remaining fugitives as soon as possible. The Council commended States that had accepted the relocation of acquitted persons or convicted persons who had completed serving their sentences to their territories, and reiterated its call upon all States in a position to do so to cooperate with and render all necessary assistance to the Tribunals for their increased efforts towards the relocation of acquitted persons and convicted persons who had completed serving their sentences. In addition, by resolution 2054 (2012), the Council noted that one permanent judge would be redeployed from the Trial Chamber of the ICTR to the Appeals Chamber and five *ad litem* judges would leave the ICTR before 30 June 2012, on the completion of the cases to which they were assigned. Furthermore, in resolution 2080 (2012), the Security Council welcomed the successful commencement of the functioning of the branch of the Mechanism for the ICTR on 1 July 2012 and took note of the assessment of the Mechanism.[748] In the same resolution, the Council further noted that the sole remaining trial at the ICTR would be completed by 31 December 2012, and that the remaining appeal of the ICTR would be completed by 31 December 2014, commending the ICTR in this regard.

In resolution 2081 (2012), the Security Council, acting under Chapter VII of the Charter of the United Nations, *inter alia*, requested the ICTY to take all possible measures to complete its work as expeditiously as possible with the aim to facilitate the closure of the Tribunal, and recognized that concerns had been expressed that its current trial and appeal schedules go beyond 31 December 2014. The Council further requested the ICTY to present by 15 April 2013 a consolidated comprehensive plan on the completion strategy, closure and transition to the Mechanism and decided to examine the plan before 30 June 2013 with a view to considering what further recommendations should be made to facilitate the transition.

18. Rule of Law

High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels

By resolution 66/102 of 9 December 2011, entitled "The rule of law at the national and international levels", the General Assembly decided to convene a high level meeting of the topic during the high-level segment of its sixty-seventh session. On 24 September 2012, Heads of State and Government, and heads of delegation gathered at the United Nations Headquarters in New York to reaffirm their commitment to the rule of law and its

[747] See documents S/2012/349, S/2012/836, S/2012/847, respectively.

[748] S/2012/849.

fundamental importance for political dialogue and cooperation among all States and for the further development of the three main pillars upon which the United Nations is built: international peace and security, human rights and development.

As a result of the meeting, on the same date, the General Assembly adopted the Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, without a vote.[749] In the Declaration, the Heads of State and Government and heads of delegation, *inter alia*, reaffirmed their commitment to the purposes and principles of the Charter of the United Nations, international law and justice, and to an international order based on the rule of law. They recognized that the rule of law applied to all States equally, and to international organizations, including the United Nations and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions. Moreover, they recognized that all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law.

The Heads of State and Government and heads of delegation expressed their determination to establish a just and lasting peace all over the world, in accordance with the purposes and principles of the Charter of the United Nations. They further rededicated themselves to support all efforts to uphold the sovereign equality of all States, to respect their territorial integrity and political independence, to refrain from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations, and to uphold the resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remained under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language or religion, international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and the fulfilment in good faith of the obligations assumed in accordance with the Charter.

They reaffirmed the duty of all States to settle their international disputes by peaceful means*, inter alia* through negotiation, enquiry, good offices, mediation, conciliation, arbitration and judicial settlement, or other peaceful means of their own choice. They also reaffirmed that human rights, the rule of law and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations.

They expressed their conviction that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law. For this reason, they were convinced that this interrelationship should be considered in the post-2015 international development agenda.

The Heads of State and Government and heads of delegation further reaffirmed the obligation of all States to comply with the decisions of the International Court of Justice

[749] General Assembly resolution 67/1.

in cases to which they are parties; and called upon States that had not yet done so to consider accepting the jurisdiction of the International Court of Justice in accordance with its Statute.

They reaffirmed that States should abide by all their obligations under international law, and stressed the need to strengthen support to States, upon their request, in the national implementation of their respective international obligations through enhanced technical assistance and capacity-building.

The Heads of State and Government and heads of delegation took note of the report of the Secretary-General entitled "Delivering justice: programme of action to strengthen the rule of law at the national and international levels".[750] They emphasized the importance of continuing their consideration and promotion of the rule of law in all its aspects, and to that end, decided to pursue their work in the General Assembly to develop further the linkages between the rule of law and the three main pillars of the United Nations: peace and security, human rights and development. To that end, the Secretary-General was requested to propose ways and means of developing, with wide stakeholder participation, further the linkages between the rule of law and the three main pillars of the United Nations, and to include this in his report to the Assembly at its sixty-eighth session.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. International Labour Organization[751]

(*a*) Treaty provisions concerning the legal status of the International Labour Organization (ILO)

On 23 January 2012, an agreement for extension to the "Supplementary Understanding and its Minutes of the Meeting dated 28th February, 2007"[752] was concluded and entered into force with the Government of Myanmar. This agreement extends the Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her.[753]

On 30 November 2012, the Government of São Tomé and Principe signed an agreement for the application of the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947,[754] and its annex I concerning the ILO in relation to cooperation activities with the ILO.

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[750] A/66/749.

[751] For official documents and more information on the International Labour Organization, see http://ilo.org.

[752] ILO, document GB.298/5/1, appendix.

[753] *Ibid*., document GB.313/INS/6(Add.), appendix I.

[754] United Nations, *Treaty Series*, vol. 33, p. 261.

(*b*) Recommendation and resolutions adopted by the International Labour Conference during its 101st session (Geneva, June 2012)[755]

At the 101st session of the International Labour Conference, the Conference adopted the following recommendation and seven resolutions,[756] of which three are highlighted below:

(i) *Recommendation concerning national floors of social protection, 2012 (No. 202)*

On 14 June 2012, the International Labour Conference (ILC) adopted the recommendation concerning national floors of social protection, 2012 (No. 202)[757] which provides guidance to members in building comprehensive social security systems and extending social security coverage by prioritizing the establishment of national floors of social protection, accessible to all in need. In order to ensure effective access to essential health care and basic income security throughout the life cycle, national social protection floors should comprise at least four social security guarantees, as defined at the national level: access to essential health care, including maternity care; basic income security for children, providing access to nutrition, education, care and other necessary goods and services; basic income security for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and basic income security for older persons. Such guarantees should be provided to all residents and all children, and established by law. The Recommendation also provides guidance to members on the definition of basic social security guarantees and the establishment of their levels, the approaches and measures that can be taken for the provision of such guarantees, and their financing.

Pursuant to the Recommendation, social protection floors should be implemented within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards, and notably the Social Security (Minimum Standards) Convention, 1952 (No. 102).[758] The Recommendation provides further guidance to members on the formulation of such strategies and on other policy aspects that should be taken into account at the time of formulation and implementation. It also contains provisions for the monitoring of progress at national level that should help members in implementing social protection floors and achieving other objectives of national social security extension strategies.

Recognizing the overall and primary responsibility of the State in giving effect to the Recommendation, the Recommendation comprises a set of principles, including a rights-based approach based on entitlements prescribed by national law; diversity of methods and

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[755] *Resolutions adopted by the International Labour Conference at its 101st Session* (Geneva, June 2012).

[756] The following resolutions were also adopted at the 101st session: "Resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution"; "Resolution concerning the scale of assessments of contributions to the budget for 2013"; "Resolution concerning the composition of the Administrative Tribunal of the ILO"; and "Resolution concerning the financial report and audited consolidated financial statements for the year ended 31 December 2011".

[757] ILO, *Provisional Record No. 14A of the 101st Session of the International Labour Conference*.

[758] United Nations, *Treaty Series*, vol. 210, p. 131.

approaches; progressive realization; universality of protection based on social solidarity; adequacy and predictability of benefits; protection of rights and dignity of beneficiaries; non-discrimination, gender equality and responsiveness to special needs; financial, fiscal and economic sustainability with due regard to social justice and equity; transparent, accountable and sound financial management and administration; tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned.

The Recommendation complements existing conventions and recommendations, notably by assisting member States in covering the unprotected, the poor and the most vulnerable, including workers in the informal economy and their families. It thereby aims at ensuring that all members of society enjoy at least a basic level of social security throughout their lives, though comprehensive and adequate social security systems coherent with national policy objectives. It completes the two-dimensional strategy for the extension of social security coverage adopted by the ILC at its 100th session in June 2011.

(ii) *Resolution concerning efforts to make social protection floors a national reality worldwide*

On 13 June 2012, the ILC adopted the resolution concerning efforts to make social protection floors a national reality worldwide, in which it invited Governments, employers and workers jointly to give full effect to Recommendation No. 202 as soon as national circumstances permit. Through the resolution, the ILC also invited the Governing Body to request the Director-General of ILO to implement, subject to the availability of resources, cost-effective measures aimed at promoting, through appropriate awareness-raising initiatives, the widespread implementation of the Recommendation.

(iii) *Resolution concerning the youth employment crisis: A call for action*

On 14 June 2012, the ILC adopted the resolution and conclusions concerning the youth employment crisis: A call to action, affirming that generating sufficient decent jobs for youth is of highest global priority. The conclusions underscore a renewed commitment for stepping up the implementation of the 2005 resolution concerning youth employment,[759] call for urgent action in view of the new crisis situation, and provide guidance on the way forward. The conclusions set out a portfolio of tried and tested measures in five areas: employment and economic policies for youth employment, employability, labour market policies, youth entrepreneurship and self-employment and rights for young people and underscore the need for balance, coherence and complementarity across the policy measures.

[759] *Resolutions adopted by the International Labour Conference at its 93rd Session* (Geneva, June 2005).

(iv) *Resolution concerning the recurrent discussion on fundamental principles and rights at work*

In the context of the ILO Declaration on Social Justice for a Fair Globalization, 2008[760] and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998,[761] the third recurrent discussion held by the ILC in June 2012 was devoted to the fundamental principles and rights at work. In accordance with the above Declarations, and complementing the more legal approach taken by the General Survey of the Committee of Experts concerning the eight fundamental Conventions, the Conference examined trends relating to fundamental principles and rights at work, so that the action of the Organization could take the fullest possible account of the needs of its members. On 13 June 2012, the ILC adopted the resolution and conclusions concerning the recurrent discussion on fundamental principles and rights at work. The conclusions, which set forth the Organization's priorities with respect to fundamental principles and rights at work for the next four years, contain guiding principles and a framework for action. At its 316th session in November 2012, the Governing Body discussed a proposed plan of action in follow-up to the Conclusions.[762]

After affirming that, in the context of the current economic crisis, the realization of fundamental principles and rights at work constituted for the ILO and its member States "a necessary, urgent and achievable goal to advance development and social justice", the Conference reaffirmed the universal and immutable nature of these principles and rights, their particular significance both as human rights and enabling conditions for the achievement of the other ILO strategic objectives, and for the creation of decent jobs and their inseparable, interrelated and mutually reinforcing character. This was the first time that the Conference explicitly recognized fundamental principles and rights at work as human rights.

The ILC emphasized the need for efforts to ensure the accessibility of fundamental principles and rights at work to all, especially certain population groups (such as migrant workers, minorities and indigenous peoples) and categories of workers (such as domestic workers, rural workers and workers in export processing sectors), who were more exposed to violations than others, as well as workers in non-standard forms of employment, affecting particularly women and young workers. The conclusions underlined the need to strengthen enforcement of fundamental principles and rights at national level, including by ensuring effective functioning of the labour inspectorate, and fair and unbiased mechanisms to resolve disputes.

With respect to standards-related action, the ILC gave priority to the need to give new impetus to the campaign for the universal ratification of the eight fundamental Conventions, taking into account the low rates of ratification of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)[763] and the Right to Organize

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[760] Adopted by the ILC at its Ninety-seventh Session, Geneva, 10 June 2008.

[761] Adopted by the ILC at its Eighty-sixth Session, Geneva, 18 June 1998 (annex revised 15 June 2010).

[762] ILO, document GB.316/INS/5/3.

[763] United Nations, *Treaty Series*, vol. 68, p. 17.

and Collective Bargaining Convention, 1949 (No. 98).[764] It emphasized that ILO should promote the ratification and application of other relevant ILO instruments, including the ILO governance Conventions. It further instructed the ILO to conduct a detailed analysis to identify gaps in the coverage of existing standards relating to forced labour. This is with a view to determine the possible need for standard-setting to complement the ILO forced labour Conventions in order to address prevention and victim protection, including compensation, and address human trafficking for labour exploitation. To this end, a meeting of experts would be held from 11 to 15 February 2013 to consider an analysis of forced labour law and practice prepared by the Office. The conclusions further indicated that the ILO should complete an in-depth evaluation of its action for all fundamental principles and rights at work by the end of 2015.

(*c*) Guidance document submitted to the Governing Body of the International Labour Office

Joint Food and Agriculture Organization (FAO)/ (ILO)/ International Maritime Organization (IMO) Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels; Safety recommendations for decked fishing vessels of less than 12 metres in length and undecked fishing vessels

In November 2012, the Governing Body took note of the joint FAO/ILO/IMO Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels and approved the publication by the IMO of the Safety recommendations for decked fishing vessels of less than 12 metres in length and undecked fishing vessels (implementation guidelines),[765] which were elaborated during the 53rd session of the IMO Subcommittee on Stability and Load Lines and on Fishing Vessels' Safety (SLF) in which an ILO tripartite delegation took part.

(*d*) Legislative advisory services

In 2012, with respect to international labour standards, the ILO provided technical assistance in reporting and other international labour standards related obligations, including capacity building, assistance with implementation and reform of national legislation, to nearly 50 countries. Assistance included training on the content of selected international labour standards; research to generate information on the status of implementation of international labour standards, including legislative gap analyses; advice on elements that will enable tripartite constituents to take the relevant decisions aiming at full implementation; legal advice on the revision or drafting of legislation and regulations in the light of the supervisory bodies' comments; and strengthening the data collection and reporting capacity of tripartite constituents.[766]

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[764] *Ibid*., vol. 96, p. 257.

[765] ILO, document GB.316/POL/4(&Corr.) and decision dec-GB.316/POL/4.

[766] ILC, *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III, 2012 – 102nd Session (Part 2) - Information document on ratifications and standards-related activities*.

Apart from assistance with implementation and reforms of national legislation, the ILO also organised approximately 38 legal training courses at the interregional, regional, subregional and national levels in collaboration with its Training Centre in Turin. Furthermore, the ILO developed and updated the Employment Protection database (EPLex).[767]

(*e*) Committee on Freedom of Association

In 2012, the Committee on Freedom of Association had before it more than 231 cases concerning 64 countries. More than 87 new cases were been submitted to it since the last meeting of the Committee of Experts. The Committee on Freedom of Association drew the attention of the Committee of Experts to the legislative aspects of Cases Nos. 2611 (Romania), 2698 (Australia), 2723 (Fiji), 2737 and 2754 (Indonesia), 2727 (Bolivarian Republic of Venezuela), 2888 (Poland) and 2789 and 2892 (Turkey).[768]

(*f*) Representations submitted under article 24 of the ILO Constitution and complaints made under article 26 of the ILO Constitution

The Governing Body considered the developments with respect to 11 representations submitted under article 24 of the Constitution by industrial associations of employers or workers, alleging that a member State that had ratified a Convention had failed to secure within its jurisdiction the effective observance of that Convention. The Governing Body also considered the developments in relation to several complaints made under article 26 of the Constitution alleging that a member State that had ratified a Convention was not securing its effective observance.[769]

(*g*) Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel

The Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART) examined the application of the ILO/UNESCO Recommendation concerning the Status of Teachers (1966) and the UNESCO Recommendation concerning the Status of Higher-Education Personnel (1997). It also considered allegations made by teachers organizations concerning the non-application of principles of the Recommendations. In November 2012, the ILO Governing Body took note of the allegations examined at the Committee's 11th session, held from 8 to 12 October 2012 at the ILO, and authorized the communication of the CEART report as well as the record of the Governing Body's discussions to the concerned Governments and teachers organizations.[770]

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[767] Available from http://www.ilo.org/dyn/eplex/termmain.home (accessed on 31 December 2012).

[768] See footnote 766 above.

[769] *Ibid*.

[770] ILC, documents GB.316/LILS/3 and GB.316/LILS/PV/Draft, para. 26.

2. Food and Agriculture Organization of the United Nations[771]

(*a*) Membership of the Food and Agriculture Organization (FAO)

As of 31 December 2012, the membership of FAO consisted of 191 member nations, one member organization (the European Union) and two associate members (the Faroe Islands and Tokelau).

(*b*) Constitutional and general legal matters

(i) *Work undertaken by the Committee on Constitutional and Legal Matters*

During 2012, the FAO Legal Office serviced the 94th and 95th sessions (Rome, 19 to 21 March and 8 to11 October 2012) of the Committee on Constitutional and Legal Matters (CCLM) established pursuant to paragraph 6 of article V of the FAO Constitution.[772]

The CCLM examined a number of issues concerning the governance of the Organization and other legal matters and reported on them to the FAO Council (the Council). In particular, the CCLM reviewed the standard arbitration clause included in FAO commercial contracts and endorsed a proposal, which was approved by the Council, to include a provision for the administration of arbitration proceedings by the Permanent Court of Arbitration (PCA).[773]

The CCLM also endorsed two draft Council resolutions concerning the statutes of two bodies established pursuant to article VI of the FAO Constitution, for adoption by the Council. At its hundred and forty-fifth session, (Rome, 3 to 7 December 2012), the Council adopted resolution 1/145 entitled "Revised Statutes of the Agriculture and Land and Water Commission for the Near East"[774] and resolution 2/145, entitled "Revised Statutes of the Advisory Committee on Paper and Wood Products (ACPWP)".[775]

In addition, the CCLM reviewed a draft conference resolution entitled "Amendments to Rules XXIX.2, XXX.2, XXXI.2 and XXXII.2 of the General Rules of the Organization" to the effect that notifications of membership in FAO technical committees should be made not later than ten days before the opening date of a session.[776] The Council endorsed the draft conference resolution and requested that it be forwarded to the June 2013 Conference session for adoption.[777]

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[771] For official documents and more information on the Food and Agriculture Organization of the United Nations, see http://www.fao.org.

[772] *Basic Texts of the Food and Agriculture Organization of the United Nations* (FAO Basic Texts), 2011, vol. I, p. 3. See also, rule XXXIV of the General Rules of the Organization, *ibid*., p. 61.

[773] FAO, Report of the 95th Session of the CCLM (Rome, 8-11 October 2012), document CL 145/2 and Report of the Council of FAO 145th Session (Rome, 3-7 December 2012), document CL 145/REP, para. 39.

[774] *Ibid*., Report of the 95th Session of the CCLM, paras. 34-35 and Report of the 145th Session of the Council, appendix H.

[775] *Ibid*., Report of the 95th Session of the CCLM, paras. 42-44; and Report of the 145th Session of the Council, appendix J.

[776] See *ibid*., Report of the 95th Session of the CCLM, paras. 39-40.

[777] See *ibid*., Report of the 145th Session of the Council, appendix I.

(ii) *Amendments to the Rules of Procedure of three committees*

During 2012, the FAO Legal Office serviced the 69th session of the Committee on Commodity Problems (Rome, 28 to 30 May 2012), the 30th session of the Committee on Fisheries (Rome, 9 to 13 July 2012) and the 39th session of the Committee on World Food Security (Rome, 15 to 20 October 2012) as they reviewed proposed amendments to their Rules of Procedures. The amendments approved were reflected in the reports of these committees[778] and are in the process of being incorporated in the FAO Basic Texts.

(*c*) Activities in respect of multilateral treaties

Entry into force of treaties previously adopted

The Southern Indian Ocean Fisheries Agreement (SIOFA), adopted by a Conference of Plenipotentiaries on 7 July 2006 at FAO headquarters in Rome and deposited with the Director-General of FAO, entered into force on 21 June 2012.[779]

(*d*) Legislative matters

(i) *Legislative assistance and advice*

During 2012, the FAO Legal Office provided legislative assistance and advice to more than 80 countries by reviewing and providing advice in drafting national legislation and regulations on the topics of animal health and production, agriculture finance, agrarian, land, agribusiness, trade and cooperatives, biodiversity and genetic resources legislation, climate change, fisheries and aquaculture, food safety, food security and sovereignty, forestry, land and plant protection legislation, including pesticide control and seeds, and water.

The FAO Legal Office also provided legislative assistance and advice during a number of international meetings. In particular, it participated in the World Bank/the World Wildlife Foundation's Consultative Meeting on Proposed Mechanisms for Partnership Coordination and Policy Coherence in African Fisheries (Nairobi, February 2012).

The FAO Legal Office supported the Technical Consultation on Flag State Performance (Rome, March 2012), a follow-up to a previous session held in May 2011. During these consultations, FAO members and interested organizations discussed criteria for assessing flag State performance, with the aim of agreeing on a set of guidelines to help combat illegal, unreported and unregulated (IUU) fishing.

Also in March 2012, the FAO Legal Office participated in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973[780] working

[778] See *ibid*., Report of the 69th Session of the Committee on Commodity Problems (Rome, 28-30 May 2012), document C 2013/23; Report of the 30th Session of the Committee on Fisheries (Rome, 9-13 July 2012), document FIPI/R1012 (En); and Report of the 39th Session of the Committee on World Food Security (Rome, 15-20 October 2012), document CFS 2012/39.

[779] The text of the Agreement and a record of the States and regional economic integration organizations that signed, ratified, accepted, approved or acceded to it are available from http://www.fao.org.

[780] United Nations, *Treaty Series*, vol. 993, p. 243.

group meeting to discuss the interpretation and implementation of CITES provisions relating to "introduction from the sea" (Shepherdstown, USA).

The FAO Legal Office and the FAO Fisheries Department co-organized a workshop with the Asia-Pacific Fishery Commission (APFIC) on the 2009 FAO Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing[781] (Bangkok, April 2012).

The FAO Legal Office supported the preparation and negotiation process of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, which were endorsed by the 38th special session of the Committee on World Food Security (Rome, 11 May 2012).[782] These Guidelines are intended to contribute to global and national efforts towards the eradication of hunger and poverty by promoting secure tenure rights and equitable access to land, fisheries and forests. In support of the use of these Guidelines, FAO has prepared technical guides on governance of tenure.

During the 30th session of the Committee on Fisheries (Rome, 9-13 July 2012), the FAO Legal Office provided legal advice on the aforementioned FAO Port State Measures Agreement and on national legislation on the management and conservation of sharks. It also provided legal assistance during side events that addressed global shark management, marine protected areas and areas beyond national jurisdiction (ABNJ). The FAO Legal Office also assisted the secretariat of the fourth meeting of the Regional Fisheries Bodies Secretariat Network (RSN), convened on the occasion of the 30th session of the Committee on Fisheries, where legal issues related to port State measures, IUU fishing and marine protected areas were addressed.

FAO also organized the Discussion Forum on Governance Frameworks for REDD+[783] at the eighteenth session of the Conference of the Parties of the United Nations Framework Convention on Climate Change (Qatar, 26 November to 7 December 2012). On the occasion of the twenty-first session of the Committee on Forestry (Rome, 24-28 September 2012), the FAO Legal Office organized a side event on "Legal Preparedness for REDD+: Exploring needs and sources of expert support". The event served as a forum to share country experiences and expert views on major legal considerations related to REDD+ and to discuss country needs in relation to the type of legal support required, including the expectations in receiving legislative support to implement REDD+.

Also in 2012, the FAO Legal Office contributed to papers and background documents for international meetings, including the United Nations Conference on Sustainable Development, RIO+20 (Rio de Janeiro, June 2012).[784]

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[781] Available from http://www.fao.org.

[782] The text of the guidelines is available from http://www.fao.org/docrep/ (accessed on 31 December 2012).

[783] REDD stands for "Reducing Emissions from Deforestation and Forest Degradation", and is an effort to create a financial value for the carbon stored in forests. REDD+ goes further and includes the role of conservation, sustainable management of forests and enhancement of forest carbon stocks.

[784] See, for example: *A Blueprint for Ocean and Coastal Sustainability; Global Partnership for Oceans*; and *Abandoned, Lost or otherwise Discarded Fishing Gear.*

(ii) *Legislative research and publications*

In 2012, the FAO Legal Office published the following Legislative Studies:

– "*Manual para la formulación de reglamentos nacionales para la gestión de recursos hídricos*";

– "*Organic agriculture and the law*"; and

– "*Pro-poor legal and institutional frameworks for urban and peri-urban agriculture*".

The FAO Legal Office also published the following Legal Paper Online in 2012:

"Forest Carbon Tenure in Asia-Pacific: A comparative analysis of legal trends to define carbon rights in Asia-Pacific".

(iii) *Collection, translation and dissemination of legislative information*

During 2012, FAO continued to collect, translate and disseminate legislative information on food and agriculture legislation worldwide through its online databases which are freely accessible from the Legal Office's website, namely FAOLEX,[785] FISHLEX,[786] , WATERLEX,[787] WATER TREATIES[788] and ECOLEX.[789]

(*e*) Agreements concluded under FAO auspices

FAO concluded various agreements which came into force in 2012 that contained provisions relating to the legal status, privileges and immunities of FAO.

In particular, agreements based on the standard "Memorandum of Responsibilities" concerning specific sessions held outside FAO headquarters, containing provisions on privileges and immunities of FAO and participants similar to the standard text,[790] were concluded in 2012 with the Governments of the following countries acting as hosts to such sessions: Brazil, Canada, China, Costa Rica, Croatia, Egypt, Fiji, Finland, France, Greece, India, Indonesia, Japan, Lebanon, Morocco, Norway, Russia, Saudi Arabia, Spain, Thailand, Tunisia and Viet Nam.

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[785] See http://faolex.fao.org/faolex/index.htm (accessed on 31 December 2012).

[786] See http://faolex.fao.org/fishery/index.htm (accessed on 31 December 2012).

[787] See http://faolex.fao.org/waterlex/index.htm (accessed on 31 December 2012).

[788] See http://faolex.fao.org/watertreaties/index.htm (accessed on 31 December 2012).

[789] See http://www.ecolex.org/start.php (accessed on 31 December 2012).

[790] See *United Nations Juridical Yearbook 1972* (United Nations Publication, Sales No. E.74.V.1), p. 32.

3. United Nations Educational, Scientific and Cultural Organization[791]

(*a*) International regulations

(i) *Entry into force of instruments previously adopted*

No multilateral conventions or agreements adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO), entered into force in 2012.

(ii) *Proposals concerning the preparation of new instruments*

a. Independent preliminary study of the desirability, the technical and legal aspects, and the scope, rationale, added value, and administrative and financial implications of a standard-setting instrument on the protection and promotion of museums and collections

In October 2012, at its 190th session, the Executive Board invited the Director-General to submit an independent preliminary study of the desirability, the technical and legal aspects, and the scope, rationale, added value, and administrative and financial implications of a standard-setting instrument on the protection and promotion of museums and collections, for examination by the Board at its 191st session in April 2013, with a view to inscribing this item on the agenda of the 37th session of the General Conference in November 2013.[792]

b. Preliminary study of the technical, financial and legal aspects on the desirability of a standard-setting instrument on preservation and access to documentary heritage

At the 190th session, the Executive Board invited also the Director-General to undertake a preliminary study of the technical, financial and legal aspects on the desirability of a standard-setting instrument on preservation and access to documentary heritage for examination by the Board at its 191st session.[793]

(iii) *Proposals concerning the preparation of revised instruments*

a. Preliminary study of the technical and legal aspects relating to the desirability of revising the 1976 Recommendation on the Development of Adult Education

At its 189th session, the Executive Board requested the Director-General to submit a preliminary study of the technical and legal aspects relating to the desirability of revising the 1976 Recommendation on the Development of Adult Education to it at its 191st session, with a view to submitting the preliminary study to the General Conference at its 37th session.[794]

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[791] For official documents and more information on the United Nations Educational, Scientific and Cultural Organization, see http://www.unesco.org.

[792] UNESCO, document 190 EX/Decision 11.

[793] *Ibid*., document 190 EX/Decision 16.

[794] *Ibid*., document 189 EX/Decision 13 (II).

b. Preliminary study on the technical and legal aspects relating to the desirability of making further revisions to the 2001 Revised Recommendation concerning Technical and Vocational Education

In October 2012, at its 190th session, the Executive Board invited the Director-General to submit to it at its 191st session a preliminary study on the technical and legal aspects relating to the desirability of making further revisions to the 2001 Revised Recommendation concerning Technical and Vocational Education, with a view to submitting this study to the 37th session of the General Conference.[795]

c. Preliminary study on the technical and legal aspects relating to the desirability of revising the 1974 Recommendation on the Status of Scientific Researchers

At its 190th session, the Executive Board invited also the Director-General to submit a preliminary study on the technical and legal aspects relating to the desirability of revising the 1974 Recommendation on the Status of Scientific Researchers to it at its 191st session, possibly with a view to inscribing the question of a revision of the 1974 Recommendation on the agenda of the 37th session of the General Conference.[796]

(*b*) Human rights

Examination of cases and questions concerning the exercise of human rights within UNESCO fields of competence

The Committee on Conventions and Recommendations of the Executive Board met in private sessions at UNESCO headquarters from 27 to 29 February 2012 and from 3 to 5 October 2012 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 February 2012 session, the Committee examined 26 communications, of which 6 were examined with a view to determining its admissibility, 19 were examined as to their substance and 1 was examined for the first time. Three communications were struck from the list because they were considered as having been settled and the examination of the other 23 was deferred. The Committee presented its report to the Executive Board at its 189th session.

At its October 2012 session, the Committee examined 29 communications, of which 5 were examined with a view to determining their admissibility, 18 were examined as to their substance and 6 were examined for the first time. Four communications were struck from the list because they were considered as having been settled and 1 communication was also struck from the list because it was considered as inadmissible. The examination of the other 24 was deferred. The Committee presented its report to the Executive Board at its 190th session.

[795] *Ibid*., document 190 EX/Decision 24 (III).

[796] *Ibid*., document 190 EX/Decision 24 (IV).

4. World Health Organization[797]

(*a*) Constitutional developments[798]

No new amendments to the World Health Organization (WHO) Constitution were proposed or adopted, and neither of the two current amendments entered into force.[799]

(*b*) Other normative developments and activities

(i) *International Health Regulations (2005) ("IHR (2005)" or the "Regulations")*

In accordance with article 22 of the WHO Constitution and articles 59 and 64 of the IHR (2005), the Regulations entered into force for Liechtenstein on 28 March 2012. With the inclusion of Liechtenstein, there were 195 States parties to the IHR (2005) as of the end of 2012.

The IHR (2005) specifies a timeline for the establishment of specified national public health core capacities based on the date of entry into force of the IHR for a State party; such capacities should be in place as soon as possible but no later than five years from the entry into force (articles 5 and 13), subject to potential limited extensions. For the vast majority of States parties, by 15 June 2012 they were to have established all such core capacities as provided in annex 1 of the IHR (2005); if not yet established, States parties could avail themselves of an extension of the period for a further two years upon submitting a report of a justified need to WHO accompanied by an implementation plan. As at 3 December 2012, a total of 107 States parties had obtained extensions to the deadline and a further 12 States parties had submitted requests but had not yet provided the necessary implementation plan.

On 26 May 2012, by its resolution WHA65.23 entitled "Implementation of the IHR (2005)", the Health Assembly affirmed its renewed commitment to full implementation of the IHR (2005).

In the area of implementation of the Regulations in national legislation, in 2012 Secretariat activities included conducting three multi-country interactive workshops for legal and technical national personnel in: Almaty, Kazakhstan (in collaboration with the WHO European Regional Office), and in Marrakesh, Morocco and Cairo, Egypt (in collaboration with the Eastern Mediterranean Regional Office). The workshops were designed to provide countries with the necessary tools and guidance to assess and, where necessary, revise existing national legislation in order to further facilitate the full and efficient implementation of the Regulations. Support in this area was provided through a wide range of other communications, advice and information directly to States parties or through regional offices.

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[797] For official documents and more information on the World Health Organization, see http://www.who.int.

[798] For the text of the WHO Constitution, see United Nations, *Treaty Series*, vol. 14, p. 185.

[799] Amendment to article 7 (adopted by the eighteenth World Health Assembly, resolution WHA18.48 of 20 May 1965) and amendment to article 74 (adopted by the thirty-first World Health Assembly, resolution WHA31.18 of 18 May 1978).

Legally-oriented support to States parties on a range of IHR (2005) implementation and application issues was also provided through advice directly to countries, or through WHO Regional and Country Offices, and during meetings involving States parties. Additionally, key WHO guidance materials on IHR (2005) implementation in national legislation were translated into additional languages of the World Health Assembly.

(ii) *Agreement with the Solomon Islands*

WHO entered into technical advisory cooperation agreements with the Solomon Islands. The cooperation consisted of WHO providing technical advice to the State which, in turn, would facilitate the effective development of technical advisory cooperation in the country. Specific provisions addressed the establishment of an office in the country and governed its functioning, including the granting of privileges and immunities to the Organization and to the staff.

(iii) *Agreements with intergovernmental organizations*

On 26 May 2012, by resolution WHA65.16, the World Health Assembly approved the Agreement between the Commission of the African Union and the WHO which was submitted to it under the terms of article 70 of the WHO Constitution. As indicated in its article II.2, the Agreement aims at strengthening cooperation in areas of common interest, including promoting and improving health, reducing avoidable mortality and disability, preventing disease, countering potential threats to health, making contributions towards ensuring a high-level of health protection and placing health at the core of the international development agenda in the fight against poverty, the protection of the environment, the promotion of social development, and the raising of living and working conditions.

(iv) *Supporting national law reform efforts on WHO mandated topics*

During 2012, the WHO headquarters and regional offices provided technical cooperation to a number of member States in connection with the development, assessment or review of various areas of health legislation and WHO mandated topics, including tobacco related issues, marketing of food to children and food legislation in general. Specific support was provided to countries for developing and/or revising national law and legislations on public health, road safety, health insurance coverage, safe abortion, labour laws regarding maternity leave, infant and young child feeding, including a milk code legislation.

The WHO Department of Reproductive and Research published the second edition of the document "Safe abortion: technical and policy guidelines for health systems".[800] The publication contains an amount of new data on epidemiological, clinical, service delivery, legal and human rights aspects of providing safe abortion care and provides the latest evidence-based guidance on clinical care. The publication further outlines a human-rights-based approach to laws and policies on safe abortion care.

[800] WHO, *Safe abortion: technical and policy guidelines for health systems*, 2nd ed., 2012.

(*c*) Adoption of new instruments

The Intergovernmental Negotiating Body (INB) on a Protocol on Illicit Trade in Tobacco Products that had been established by the Conference of the Parties (COP) in 2007 held its fifth and final session from 29 March to 4 April 2012 in Geneva. After four years of negotiations, the INB agreed on a draft text of a protocol to eliminate illicit trade in tobacco products and submitted it to the fifth session of the COP for consideration and adoption.

The fifth session of the COP took place in Seoul, Republic of Korea, from 12 to 17 November 2012, at which the Protocol to Eliminate Illicit Trade in Tobacco Products was adopted.[801] In accordance with its article 43, the Protocol is open for signature by all parties to the WHO Framework Convention on Tobacco Control, 2005[802] (WHO FCTC) from 10 January 2013 until 9 January 2014.

The Conference also adopted a set of guiding principles and recommendations to support the implementation of article 6 of the WHO FCTC on tax and price policies and established an open-ended intersessional drafting group to finalize the guidelines for consideration.[803] Furthermore, the Conference amended the partial guidelines on articles 9 and 10[804] in the area of product regulation, requesting the working group to continue its work, and established a process for further developing policy options and recommendations on articles 17 and 18 concerning economically sustainable alternatives to tobacco growing.[805]

Additionally, the Conference established a working group on sustainable implementation of the Convention and an expert group on article 19 (Liability),[806] and requested WHO to carry out further technical work in relation to smokeless tobacco and electronic nicotine delivery systems. Decisions were also taken to strengthen the reporting system of the Convention and the cooperation with international organizations.

With regard to the role of the COP Bureau, the COP extended its intersessional mandate. The COP Bureau was also requested to finalize the process for appointment and renewal of term of office of the head of the Secretariat on a provisional basis.

The Parties also made a collective commitment, in the Seoul Declaration,[807] to accelerate implementation of the Convention and to protect it from interference by the tobacco industry; and to cooperate with each other, with the Convention Secretariat and other international bodies to strengthen their capacity to implement the Convention.

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[801] Decision FCTC/COP5(1). For the complete text of the Protocol to Eliminate Illicit Trade in Tobacco Products, see section 1. of chapter IV.B, below.

[802] United Nations, *Treaty Series*, vol. 2302, p. 166.

[803] Decision FCTC/COP5(7).

[804] Decision FCTC/COP5(6).

[805] Decision FCTC/COP5(8).

[806] Decision FCTC/COP5(9).

[807] Decision FCTC/COP5(5).

5. International Monetary Fund[808]

(*a*) Membership

(i) *Accession to membership*

Following its application for membership in April 2011, on 18 April 2012, the Republic of South Sudan signed the Articles of Agreement of the International Monetary Fund (IMF), 1944[809] and became a member of the IMF. As of 31 December 2012, the membership of the IMF consisted of 188 member countries.

(ii) *Status and obligations under article VIII or article XIV of the IMF Articles of Agreement:*

Under article VIII, sections 2, 3, and 4 of the IMF Articles of Agreement, members of the IMF cannot, without the IMF approval: (i) impose restrictions on the making of payments and transfers for current international transactions; or (ii) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding these provisions, pursuant to article XIV, section 2, of the IMF Articles of Agreement, when a member joins the IMF, it can notify the IMF that it intends to avail itself of the transitional arrangements under article XIV that allow the member to maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV does not, however, permit a member, after it joins the IMF, to introduce new restrictions on the making of payments and transfers for current international transactions without IMF approval.

Members that maintain restrictions under article XIV, section 2, are required to consult with the IMF annually on the further retention of such restrictions. Members can notify the IMF at any time that they accept the obligations of article VIII, sections 2, 3, and 4, of the IMF Articles of Agreement and no longer avail themselves of the transitional provisions of article XIV. The IMF has stated that, before members notify the IMF that they are accepting the obligations of article VIII, sections 2, 3 and 4, it would be desirable that, as far as possible, members eliminate measures that would require IMF approval and satisfy themselves that they are not likely to need recourse to such measures in the foreseeable future. Where necessary, and if requested by a member, the IMF also provide technical assistance to help the member remove its exchange restrictions and multiple currency practices.

The total number of countries that have accepted the obligations of article VIII, sections 2, 3 and 4, as of 31 December 2012, was 169.

(iii) *Overdue financial obligations to the IMF*

As of 31 December 2012, members with protracted arrears (i.e., financial obligations that were overdue by six months or more) involving the general resources of the IMF were

[808] For documents and more information on the International Monetary Fund, see http://www.imf.org.

[809] United Nations, *Treaty Series*, vol. 2, p. 39.

Somalia and Sudan. Zimbabwe had arrears to the Poverty Reduction and Growth Trust (PRGT) administered by the IMF as Trustee. In addition, Somalia and Sudan had protracted overdue Trust Fund and/or Structural Adjustment Facility obligations not involving the general resources of the IMF.

Article XXVI, section 2(a), of the IMF Articles of Agreement provides that if "a member fails to fulfill any of its obligations under this Agreement, the [IMF] may declare the member ineligible to use the general resources of the [IMF]." Such declarations of ineligibility were in place at the end of December 2012 with respect to Somalia and Sudan, whose arrears were subject to sanctions under article XXVI. In the case of Zimbabwe, its arrears to the PRGT were handled under a separate framework since such arrears did not involve the IMF general resources and were therefore not subject to article XXVI.

(*b*) Issues pertaining to representation at the IMF

(i) *Somalia*

In October 1992, the IMF found that there was no effective Government for Somalia with which the IMF could carry on its activities. Since then, the positions of the Governor and Alternate-Governor for Somalia in the IMF has remained vacant.

(ii) *Madagascar*

In September 2009, the IMF found that there was no internationally recognized Government for Madagascar with which the IMF could carry on its activities. Since then, the positions of the Governor and Alternate-Governor for Madagascar in the IMF have remained vacant.

(*c*) Key policy decisions of the IMF

In 2012, the IMF took steps to move ahead with a number of major policy reforms that would allow it to meet the evolving needs of its members and to adjust to changes in the global economy.

(i) *IMF surveillance*

The activity known as IMF surveillance is a core mandate of the IMF. Article IV of the IMF Articles of Agreement requires the IMF to exercise oversight over members' compliance with their obligations under article IV, section 1, and also directs the IMF to give scrutiny ("firm surveillance") to members' exchange rate policies. As a means of enabling the IMF to discharge these responsibilities, members are required to provide the necessary information to the IMF and, when requested by the IMF, to consult with the IMF regarding their policies. In addition, article IV, section 3(a), gives the IMF a specific mandate to "oversee the international monetary system in order to ensure its effective operation." This function provides the basis for so-called multilateral surveillance, including regional and global surveillance. While surveillance is continuous in nature, policy discussions between the IMF and its members are conducted primarily in the context of "article IV consulta-

tions", which are typically held on an annual basis. Staff reports providing economic analysis and policy advice at a bilateral and multilateral level are prepared for discussion by the Executive Board. Discussion at the Executive Board is a culmination of the surveillance cycle and serves as a mechanism for peer review of the policies of IMF members and of the issues impacting global stability.

a. Integrated Surveillance Decision

On 18 July 2012, the Executive Board adopted a new decision on bilateral and multilateral surveillance, the Integrated Surveillance Decision (ISD).[810] The ISD would become effective on 18 January 2013. The ISD responds to the findings of the October 2011 comprehensive review of the legal framework and the effectiveness of Fund surveillance in the context of the 2011 Triennial Surveillance Review, including the need to better integrate bilateral and multilateral surveillance, better cover spillovers from member countries' economic and financial policies to the global economy, and clarify the framework for multilateral surveillance. The ISD defines the scope of both bilateral and multilateral surveillance, and it establishes the modalities of multilateral surveillance, including a framework for potential multilateral consultations.

While the previous surveillance decision adopted in 2007[811] focused on bilateral surveillance, the ISD laid out a conceptual link between bilateral and multilateral surveillance. The ISD made article IV consultations a vehicle not only for bilateral surveillance but also for multilateral surveillance. In particular, it allows the Fund to discuss with a member country the full range of spillovers from its policies that affect global stability.

The ISD continues the focus on the stability of member countries' exchange rate policies and external accounts but recognizes that, as demonstrated by the 2008 financial crisis, the policies of members that are in a domestic state of instability can create spillovers that undermine systemic stability even if they are transmitted through channels other than a member's balance of payments. The ISD encourages members to be mindful of the impact of their policies on global stability and domestic policies with spillover effects. These domestic policies are relevant for bilateral surveillance only if they also give rise to domestic instability of that member. In this regard, the ISD clarifies that, to the extent a member is promoting its own stability, it cannot be required to change its policies to better support the effective operation of the international monetary system.

b. Institutional view on capital flows

On 16 November 2012, the Executive Board concluded discussions and adopted an institutional view on capital flows.[812] As capital flows had increased significantly in recent years and were a key aspect of the global monetary system, the IMF needed to be in a position to provide clear and consistent advice with respect to capital flows and policies related to them. The proposed view is intended to guide Fund advice to members and, where

[810] Available from: http://www.imf.org/.

[811] IMF, decision 13919-(07/51).

[812] IMF, "The liberalization and management of capital flows: an institutional view", Washington, DC. Available from: http://www.imf.org.

relevant under the ISD, Fund assessments on issues of liberalization and management of capital flows in the context of bilateral and multilateral surveillance.

(ii) *IMF financing and financial resources*

a. Review of conditionality

On 5 September 2012, the Executive Board completed a review of the conditionality, design, and effect of IMF-supported programs during the period 2002 – September 2011. The review of conditionality was part of a process of ongoing, periodic assessments of IMF-supported programs, which were packages of policy measures, which combined with approved financing, were intended to accomplish specific objectives. Conditionality aims to ensure that members resolve their balance of payments problems, that Fund resources are safeguarded, and that, ultimately, the member is thereby in a position to repay the Fund.

The Executive Board found that the Guidelines on Conditionality remained generally appropriate, although their implementation could be improved in certain areas. The Board also found that conditionality had become more focused, more closely aligned with program goals, and generally well-tailored to country characteristics. Key recommendations included: (i) strengthening risk diagnostics; (ii) enhancing analysis of the social impact of policies and inclusion of policy measures to mitigate adverse short-term impacts on the most vulnerable; and (iii) improving outreach and transparency, including broader discussions of policies at the design stage.

b. Review of eligibility for using concessional financing resources

On 17 February 2012, the Executive Board reviewed the framework that determines which member countries are eligible to use the IMF concessional resources under the Poverty Reduction and Growth Trust ("PRGT"). The framework was established in 2010, and it is intended to preserve access to the IMF concessional financing for members with a low level of income and related economic and financial vulnerabilities. The framework includes special eligibility criteria for small countries that are less stringent with respect to per-capita income, to account for these countries' higher vulnerabilities. The Executive Board agreed to increase the population threshold used to define small States to 1.5 million from 1 million, aligning it with the definition used by the World Bank.

6. International Civil Aviation Organization[813]

(*a*) Depositary actions in relation to multilateral air law instruments

A total of 41 depositary activities by States were recorded during 2012.[814]

[813] For official documents and more information on the International Civil Aviation Organization, see http://www.icao.int.

[814] A chronological record of States that signed, ratified, acceded, accepted or adhered to multilateral air law instruments during 2012 can be found on ICAO website as part of the Legal Affairs and External Relations Bureau's Treaty Collection.

(*b*) Activities of ICAO in the legal field

(i) *Legal issues relating to unruly passengers*

Pursuant to a decision of the Council in November 2011 at its 194th session to establish a special Sub-Committee of the Legal Committee to review the Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 (the Tokyo Convention),[815] with particular reference to the issue of unruly passengers, the Sub-Committee held in Montreal its first meeting in May and its second in December 2012. The Sub-Committee prepared a draft protocol to the Tokyo Convention containing a number of options to be considered by the Legal Committee.[816]

(ii) *Promotion of Beijing instruments*

The ICAO Council and the Secretariat continued to promote the ratification of the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 2010 (the Beijing Convention)[817] and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, 2010 (the Beijing Protocol)[818] through the ICAO High-level Aviation Security Conference, meetings of the United Nations, and other fora. Two regional legal seminars also included the subject of the ratification of the Beijing instruments. One was the ICAO Legal Seminar in the Asia-Pacific Region, hosted by the Republic of Korea in April 2012. The other was the ICAO/CERG Warsaw Air Law Conference in Warsaw, hosted by Poland in September 2012 under the joint auspices of ICAO and the Central European Rotation Group (Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia). As of 31 December 2012, the Beijing Convention was ratified by Saint Lucia, Mali and the Dominican Republic, and the Beijing Protocol by Saint Lucia, Mali and Cuba.

(iii) *Cooperation within the framework of the United Nations Counter-Terrorism Implementation Task Force (CTITF)*

As a member of the United Nations CTITF, ICAO continued to cooperate with the Task Force and its other members. ICAO supported and participated in the International Meeting on Chemical Safety and Security, held under the auspices of the Organization for the Prohibition of Chemical Weapons in Tarnów, Poland, in November 2012.

(iv) *International interests in mobile equipment (aircraft equipment)*

On behalf of the Council in its capacity as the Supervisory Authority of the International Registry, the Secretariat continued to monitor the operation of the Registry to ensure that it functions efficiently in accordance with article 17 of the Convention on Inter-

[815] United Nations, *Treaty Series*, vol. 704, p. 219.

[816] ICAO, document LC/35-WP/2-1, appendix.

[817] *Ibid*., document 9960.

[818] *Ibid*., document 9959.

national Interests in Mobile Equipment, 2001 (Cape Town Convention).[819] As the second three-year term of appointment of the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) came to an end in July 2012, the Council reappointed 15 members to the Commission effective 2 July 2012. The fifth meeting of CESAIR took place in December 2012 at ICAO headquarters. The purpose of the meeting was to brief CESAIR members and to have preliminary discussions on numerous and significant changes to the Regulations and Procedures for the International Registry[820] with a view to convening a sixth meeting during the second quarter of 2013 to finalize consideration of these changes and make recommendations to the Council. Pursuant to article 62 (2) (c) of the Cape Town Convention and article XXXVII (2) (c) of the Cape Town Protocol, the Council regularly received information from the Depositary on ratifications, declarations, denunciations and designations of entry points. At the end of 2012, there were 48 ratifications and accessions to the Cape Town Convention and Protocol.

(v) *Tripartite Consultative Committee to discuss issues related to privileges and immunities*

The third meeting of the ICAO Tripartite Consultative Committee was held in May 2012. In addition to officials from Protocol Ottawa and Protocol Quebec, as well as representatives on the Council of ICAO, the City of Montreal was also represented. The meeting reviewed the issues on its agenda regarding the residence in Canada of permanent representatives and other members of national delegations and their families in such areas as: entry visas, acceptances, education, health, taxation, traffic regulations, and related privileges, immunities and courtesies granted by the Host State at both the federal and provincial levels. The participants in the Committee noted that substantive progress had been made in several domains since the previous meeting in November 2011 and agreed that the next meeting scheduled for February 2013 would take stock of achievements to date and further focus on unresolved matters.

(vi) *Collaboration with the World Tourism Organization (UNWTO)*

ICAO continued its participation in the UNWTO Working Group on the protection of tourists/consumers and travel organizers. In 2012, the Working Group was in the process of considering a proposed draft Convention on the protection of tourists and tourism service providers.[821] Subjects covered include assistance obligations of States in situations of force majeure, the protection of the tourist in the event of insolvency of the travel organizer, as well as package travel related aspects. ICAO provided technical comments and drafting proposals regarding the draft instrument under development, primarily with a view to avoiding any potential overlap with existing air law instruments adopted under the auspices of ICAO.

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[819] *Ibid*., document 9793.

[820] *Ibid*., document 9864.

[821] UNWTO, report of the Secretary-General (CAF/54/3.4, annex).

7. International Maritime Organization[822]

(*a*) Membership of the organisation

As at 31 December 2012, the membership of the International Maritime Organization (IMO) stood at 170.

(*b*) Review of the legal activities work undertaken by the IMO Legal Committee

The Legal Committee ("the Committee") held its ninety-ninth session from 16 to 20 April 2012.[823]

(i) *Monitoring the implementation of the Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (2010 HNS Protocol)*[824]

The Committee noted the Secretariat's report on the status of the 2010 HNS Protocol, as well as information containing the key conclusions of the Special Consultative Meeting held in June 2003 in Ottawa, on 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[825] (1996 HNS Convention), noting in particular that in order to avoid confusion, Governments should ratify the 2010 HNS Protocol rather than the 1996 HNS Convention; and that a number of related documents assisting with the ratification had been available on the IMO website. The Committee also noted the information on the outcome of the Special Consultative Meeting, which was held in Rotterdam in June 2011 to discuss the implementation and ratification strategies regarding the 2010 HNS Protocol and which had reconfirmed the conclusions on the definition of receiver, on transhipment and on reporting requirements prior to ratification. The participants agreed to finalize implementing legislation by 2013.

The Legal Committee was requested to take a decision on the location of the 2010 Hazardous and Noxious Substances Fund (HNS Fund) and on whether there should be a joint secretariat of the HNS Fund and the International Oil Pollution Compensation Funds (IOPC Funds). This would remove an element of uncertainty with regard to the future of the HNS Fund and would assist the 1992 Fund Secretariat in its work, particularly with regard to discussions with the Host Government on the question of the privileges, immunities and facilities to be accorded to the future HNS Fund.

The Secretariat of IOPC Funds provided an update on the work carried out by the 1992 Fund Secretariat regarding the administrative preparations required for setting up

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[822] For official documents and more information on the International Maritime Organization, see http://www.imo.org.

[823] The report of the Legal Committee is contained in document LEG 99/14.

[824] IMO, document LEG/98/4/1.

[825] *Ibid*., document LEG/CONF.10/8/2.

the HNS Fund, as well as practical measures to assist States in the implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010[826] (2010 HNS Convention), such as the development of a searchable list of hazardous and noxious substances covered by the 2010 HNS Convention and a revised Contributing Cargo Calculator, which was in preparation. The Committee noted that this had been requested in resolution 1 of the International Conference on the Revision of the HNS Convention.[827]

With regard to the status of the 2010 HNS Protocol, some concerns were expressed that, although it had been adopted for the purpose of removing the obstacles to ratification of the 1996 HNS Convention and in order to address practical problems pertaining to its implementation, IMO member States had yet to report to the Committee on their intention to become parties to the Protocol, and to provide a timeline in that respect.

(ii) *Consideration of a proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 76)[828] in accordance with article 8 of LLMC 1996*

On 19 April 2012, the Committee adopted a resolution entitled "Adoption of amendments of limitation amounts in the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976", with the new limits of liability set out by article 8 of LLMC 1996.[829]

(iii) *Provision of financial security in cases of abandonment, personal injury to, or death of, seafarers in the light of the progress towards the entry into force of International Labour Organization (ILO) Maritime Labour Convention, 2006,[830] and of the amendments relating thereto*

The Committee was informed that the ILO Maritime Labour Convention, 2006 (MLC or "the Convention") had been ratified by 25 member States, representing over 56 per cent of the world's gross tonnage of ships. As of April 2012, only five further ratifications were therefore needed to permit its entry into force, the tonnage requirement having already been met. It was expected that the five additional ratifications would be received in 2012, and the MLC would enter into force in mid-2013.

(iv) *Fair treatment of seafarers in the event of a maritime accident*

The Committee was informed by the observer delegation of ILO that, in keeping with decisions taken by the Governing Body of ILO at its 313th session in November 2011, the Director-General of ILO had communicated IMO Assembly resolution A.1056(27)/Rev.1

[826] *Ibid*., document LEG/CONF.17/10.

[827] *Ibid*., document LEG/CONF.17/DC/2.

[828] *United Nations Juridical Yearbook 1996* (United Nations Publication, Sales No. 01.V.10), p. 357.

[829] IMO, document LEG 99/14.

[830] *United Nations Juridical Yearbook 2006* (United Nations Publication, Sales No. E.09.V.1), p. 325.

to all ILO member States. Member Governments were requested to arrange for the text of resolution A.1065(27)Rev.1 to be examined by their competent services and to transmit it to relevant employers' and workers' organizations. ILO, in collaboration with IMO, continued to keep the problem of fair treatment of seafarers in the event of a maritime accident under review and, as appropriate, periodically assessed the scale of the problem. The Committee also noted that, in accordance with the decision taken at its last session, a document providing information and observations concerning unfair treatment of seafarers due to nationality or religion had been referred to the Facilitation (FAL) Committee at its thirty-seventh session. The Committee noted the information provided by the observer delegation of the International Transport Workers' Federation (ITF), on behalf of Seafarers' Rights International (SRI) about a survey it had conducted concerning the experiences of seafarers facing criminal charges. These findings were brought to the attention of the Committee because of their relevance to the Guidelines on fair treatment of seafarers in the event of a maritime accident, to the IMO resolution promoting the Guidelines, as well as to the submission of ILO.

(v) *Piracy*

The Committee noted the information provided by the IMO Secretariat reporting on the ninth and tenth sessions of Working Group 2 of the Contract Group on Piracy off the Coast of Somalia, held in the Seychelles in October 2011 and in Copenhagen in March 2012, respectively, and that a special meeting of the Working Group would take place on 24 April 2012 at IMO headquarters to discuss legal questions with regard to guidelines to Private Maritime Security Companies (PMSCs) providing armed guards (PCASP).

The Committee also noted the information provided by the IMO Secretariat about a possible study by the Secretariat on the preparation of a database of court decisions related to piracy off the coast of Somalia, and that the United Nations Interregional Crime and Justice Research Institute (UNICRI) already maintained such a database. Member Governments were therefore invited to submit relevant information either directly to UNICRI or to IMO, for forwarding to UNICRI. The Committee expressed general support for the database. The Committee requested the IMO Secretariat to contact UNICRI regarding some suggestions made by the Committee and report back to the Committee at its 100th session.

(vi) *Technical co-operation activities related to maritime legislation*

The Committee was informed that the Technical Co-operation Division (TCD) was in the process of implementing the Integrated Technical Cooperation Programme (ITCP) for 2012-2013. More activities had been planned to assist member States in drafting, updating and bringing into force primary and secondary maritime legislation in matters related to implementation of IMO instruments. Regional and national training courses on drafting of maritime legislation in selected countries, including Least Developed Countries (LDCs) and Small Island Developing States (SIDS), were also planned to be carried out during the 2012-2013 biennium. The Committee noted that in accordance with resolution 2 entitled "Promotion of technical co-operation and assistance", adopted by the 2010 International Conference on the Revision of the HNS Convention, ITCP for 2012-2013, included, as an

immediate objective, support to national authorities in the development of appropriate legislation for the ratification of the 2010 HNS Protocol.

(vii) *Review of the status of conventions and other treaty instruments emanating from the Legal Committee*

In order to facilitate the entry into force of the 2002 Athens Protocol, as well as to ensure uniform application of the rules for liabilities and insurance between States parties, the Committee encouraged administrations, to give serious consideration, at the time of ratification, to making a reservation or a declaration concerning limitation of liability for carriers and limitation for compulsory insurance for terrorist risks, taking into account the current state of the insurance market, as recommended in the Guidelines on the implementation of the 2002 Athens Protocol, adopted at the ninety-second session of the Legal Committee.[831]

Collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims

The Committee considered a proposal to be included in its agenda on collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims.

The Committee recalled that the IMO Assembly, at its twenty-seventh session, had adopted resolution A.1058(27) entitled "Collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims". The resolution invited member States and other parties concerned to submit proposals to the Legal Committee to enable consideration of the issues raised in the resolution, bearing in mind that issues of criminal jurisdiction should be consistent with international law.

The Committee agreed to include this item on its agenda, with a target completion date of 2014, noting that work could continue beyond that date, if necessary.

(viii) *Other matters*

Analysis of liability and compensation issues connected with transboundary pollution damage from offshore exploration and exploitation activities, including a re-examination of the proposed revision of Strategic Direction 7.2

At the IMO Council's request, the Committee revisited the issue of liability and compensation connected with transboundary pollution damage from offshore oil exploration and exploitation activities. It recognized that bilateral and regional arrangements are the most appropriate way to address the matter and agreed that there was no compelling need to develop an international regime on the subject.

[831] IMO, circular letter No.2758 of 20 November 2006, annex.

The Committee agreed, accordingly, to inform the Council that it wished to further analyse the liability and compensation issues, with the aim of developing guidance to assist States interested in pursuing bilateral or regional arrangements, without, however, revising the Organization's strategic plan.

(*c*) Adoption of new instruments and of amendments to conventions and protocols

(i) *Conventions and protocols*

Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977[832]

The International Conference on the Safety of Fishing Vessels, held in Cape Town, South Africa, from 9 to 11 October 2012, adopted the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977. The Agreement would be open for signature at IMO headquarters from 11 February 2013 to 10 February 2014 and would thereafter remain open for accession; it would enter into force 12 months after the date on which not less than 22 States, the aggregate number of whose fishing vessels of 24 meters in length and over operating on the high seas is not less than 3,600, had expressed their consent to be bound by it.

(ii) *Amendments to conventions and protocols*

a. 2012 amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code)[833]

These amendments were adopted by the Marine Environment Protection Committee on 5 October 2012, by resolution MEPC.225(64). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 December 2013, and would enter into force on 1 June 2014 unless, prior to the former date, more than one third of the Contracting Governments to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) and the MARPOL Protocol, 1978, 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 2012, no such notification of objection had been received.

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[832] *Ibid*., document SFV-P.CIBF,1/16.

[833] Available from http://www.imo.org.

b. 2012 amendments (Regional arrangements for port reception facilities under MARPOL annexes I, II, IV and V) to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973[834]

These amendments were adopted by the Marine Environment Protection Committee on 2 March 2012, by resolution MEPC.216(63). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 February 2013 and would enter into force on 1 August 2013 unless, prior to the former date, not less than one third of the Parties to MARPOL, or Parties the combined merchant fleets of which constitute 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 2012, no such notification of objection had been received.

c. 2012 amendments (Regional arrangements for port reception facilities under MARPOL annex VI and Certification of marine diesel engines fitted with Selective Catalytic Reduction systems under the NOx Technical Code 2008) to the annex of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto[835]

These amendments were adopted by the Marine Environment Protection Committee on 2 March 2012, by resolution MEPC.217(63). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 February 2013 and would enter into force on 1 August 2013 unless, prior to the former date, not less than one third of the Parties to MARPOL, or Parties the combined merchant fleets of which constitute 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 2012, no such notification of objection had been received.

d. 2012 amendments to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976[836] (amendments to the limitation amounts set out in article 3 of the LLMC Protocol)

These amendments were adopted by the Legal Committee on 19 April 2012, by resolution LEG.5(99) and a note verbale of notification was issued on 8 June 2012. At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted at the end of a period of 18 months after the date of notification (i.e., 8 December 2013) unless, within that period, not less than one fourth of the States that were Contracting States on the date of the adoption of the amendments, had communicated to the Secretary-General that they did not accept them. As at 31 December 2012, no such notification of objection had been received. The Legal Committee further determined, in accordance with article 8(8) of the 1996 LLMC Protocol, that these amendments, deemed so to have been accepted, would enter into force 18 months after their acceptance (i.e. 8 June 2015).

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[834] United Nations, *Treaty Series*, vol. 1340, p. 61.

[835] *Ibid.*, vol. 1340, p. 62.

[836] *United Nations Juridical Yearbook 1996* (United Nations Publication, Sales No. 01.V.10), p. 357.

e. 2012 (chapter II-1) amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended[837]

These amendments were adopted by the Maritime Safety Committee on 25 May 2012, by resolution MSC.325(90). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2013, and would enter into force on 1 January 2014 unless, prior to the former date, more than one third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As at 31 December 2012, no such notification of objection had been received.

f. 2012 amendments to the International Code of Safety for High-Speed Craft, 2000 (2000 HSC Code)

These amendments were adopted by the Maritime Safety Committee on 25 May 2012, by resolution MSC.326(90). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2013, and would enter into force on 1 January 2014 unless, prior to the former date, more than one third of the Contracting Governments to SOLAS 1974, 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 2012, no such notification of objection had been received.

g. 2012 amendments to the International Code for Fire Safety Systems (FSS Code)

These amendments were adopted by the Maritime Safety Committee on 25 May 2012, by resolution MSC.327(90). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2013, and would enter into force on 1 January 2014 unless, prior to the former date, more than one third of the Contracting Governments to SOLAS 1974, 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 2012, no such notification of objection had been received.

h. 2012 amendments to the International Maritime Dangerous Goods (IMDG) Code

These amendments were adopted by the Maritime Safety Committee on 25 May 2012, by resolution MSC.328(90). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2013, and would enter into force on 1 January 2014 unless, prior to the former date, more than one third of the Contracting Governments to SOLAS 1974, 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 2012, no such notification of objection had been received.

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[837] United Nations, *Treaty Series*, vol. 1184, p. 2.

i. 2012 amendments to the Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended[838]

These amendments were adopted by the Maritime Safety Committee on 25 May 2012, by resolution MSC.329(90). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2013, and would enter into force on 1 January 2014 unless, prior to the former date, more than one third of the Parties to the 1988 Load Lines 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 2012, no such notification of objection had been received.

8. Universal Postal Union[839]

The Universal Postal Union (UPU) and the International Telecommunication Union (ITU) concluded a service contract in February 2012 under which ITU made available the services of its ethics office.

In February 2012, the UPU signed a cooperation agreement with the Common Market for Eastern and Southern Africa (COMESA) aimed at developing the postal sector in those regions of Africa.

In June 2012, the UPU became a party to a revised version of the Inter-organization Agreement concerning the Transfer, Secondment or Loan of Staff among United Nations Common System Organizations.

In October 2012, the UPU concluded a memorandum of understanding with Union Network International aimed at promoting social dialogue and ensuring sustainable development of postal services.

The 25th UPU Congress held in Doha, Qatar, from 24 September to 15 October 2012, adopted the next world postal strategy, with the following four main objectives: improving the interoperability of the international postal networks; providing technical knowledge and expertise related to the postal sector; promoting innovative products and services, and fostering the sustainable development of the postal sector.[840]

UPU member countries meeting in Doha also decided to apply to the General Assembly of the United Nations for the authority to request advisory opinions from the International Court of Justice.

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[838] Maritime Safety Committee, MSC.77/26/Add.1.

[839] For official documents and more information on the Universal Postal Union, see http://www.upu.int.

[840] UPU, document 16 of the 25th UPU Congress.

Treaties concluded under the auspices of the UPU

At the 25th Universal Postal Congress, certain changes were made to the UPU Acts (General Regulations,[841] Universal Postal Convention, 1964[842] and Postal Payment Services Agreement[843]). The new Acts will come into force on 1 January 2014.

(i) *UPU General Regulations*

The UPU General Regulations underwent a recast designed to improve the quality of the texts:

- A new article was added to the General Regulations concerning observer status in the UPU bodies.
- A new legal framework for subsidiary bodies was established, with new provisions defining the manner of their creation, the elements constituting their reference framework, and their organization.
- The obligation for the UPU International Bureau to ensure the confidentiality and security of commercial data provided by member countries and/or their designated operators was also added to the General Regulations.
- The article of the General Regulations concerning the procedure for arbitration between UPU member countries was amended to enable any member country to delegate to its designated operator the power to initiate an arbitration procedure. This arbitration procedure applies only if these disputes relate to interpretation of the Acts and concern questions of an operational or technical nature.

(ii) *UPU Convention*

There were also a few changes to the Convention:

- A definition of the term "postal data" was added, as was a new article on handling of personal data by member countries and designated operators.
- The provisions relating to mail items for the blind were strengthened.
- The provisions of the Convention relating to postal security were supplemented in order to respond to security issues in the postal logistics chain. Security measures applied in the international postal transport chain should be commensurate with the risks or threats that they sought to address, and should be implemented without hampering worldwide mail flows or trade by taking into consideration the specificities of the mail network. In addition, security measures that had a potential global impact on postal operations should be implemented in an internationally coordinated and balanced way, with the involvement of the relevant stakeholders.
- A classification of letter-post items based on their formats was added.
- The merchandise return service was added to the list of supplementary services.

[841] Adopted on 5 October 2004 in Bucharest.

[842] United Nations, *Treaty Series*, vol. 611, p. 105.

[843] Adopted on 12 August 2008 in Geneva.

– A new article on electronic postal services was created.
– The provisions relating to terminal dues were amended.

(iii) *Postal Payment Services Agreement*

The Postal Payment Services Agreement was also amended:

– Two new postal payment services were added: the cash-on-delivery money order and the urgent money order.
– The provisions of the Postal Payment Services Agreement relating to confidentiality and use of personal data protection were supplemented, in line with the new Convention article on the same subject.

9. World Meteorological Organization[844]

(*a*) Membership

On 31 December 2012, the World Meteorological Organization (WMO) had a membership of 185 member States and six Territories. South Sudan and Tuvalu became members of WMO in 2012.

(*b*) Agreements and other arrangements concluded in 2012

(i) *Agreements with States*

Canada

Contribution arrangement between the Department of the Environment of Canada and the WMO for the Haiti Weather Systems Program – Climate Services to Reduce Vulnerability in Haiti, signed on 16 October and 2 November 2012.

Kenya

Agreement between the Government of Kenya and the WMO concerning the reconfirmation of the training facilities of the Institute for Meteorological Training and Research (IMTR) and the University of Nairobi as a WMO Regional Training Centre, signed on 22 October and 14 November 2012.

Switzerland

Agreement between the Swiss Agency for Development and Cooperation and the WMO on the co-operation in the implementation of a project CLIMANDES, signed on 16 August and 21 October 2012.

[844] For official documents and more information on the World Meterological Organization, see http://www.wmo.int.

United Kingdom

Memorandum of Understanding between WMO and the United Kingdom Meteorological Office regarding the Establishment of Fellowships for Training of Experts from Selected WMO Members Studying Masters degree in Meteorology, signed on 13 and 23 March 2012.

(ii) *Agreements with the United Nations*

United Nations Office for Disaster Risk Reduction (UNISDR)

Memorandum of Understanding between UNISDR and WMO concerning the project entitled "Building Resilience to Disasters in Western Balkans and Turkey", signed on 17 and 23 February 2012.

(iii) *Agreements with other intergovernmental organizations*

Volta Basin Authority (VBA)

Memorandum of Understanding concluded between the VBA and the WMO with the purpose to provide a general framework of cooperation and understanding between WMO and the VBA, signed on 27 September and 1 October 2012. The Memorandum of Understanding aims to facilitate collaboration between WMO and VBA to further assist the riparian countries of the Volta basin in their efforts to achieve sustainable water resources development and management.

Agreement between the VBA and WMO which sets forth the terms and conditions under which WMO and VBA cooperate in order to enable each of them to fulfil their respective roles and responsibilities of Executing and Supervising Agency with respect to the Volta-Hycos project.

Cooperation Council for the Arab States of the Gulf

Memorandum of Understanding between the WMO and the Secretariat of the Cooperation Council for the Arab States of the Gulf, signed on 26 March 2012. The parties to this Memorandum of Understanding agreed within the framework of their respective mandates and activities, to agree to design and implement joint cooperation projects; to exchange information on matters of joint interest; each Party may invite the other to attend any conferences, seminars and meetings which it may hold on matters of joint interest.

(iv) *Agreements with non-governmental organizations*

World Farmers' Organisation (WFO)

Memorandum of Understanding between the WMO and the WFO regarding the exchange of information, representation and consultation, cooperation and the exchange of publications, signed on 19 and 20 December 2012.

World Federation of Engineering Organizations (WFEO)

Memorandum of understanding between the WMO and the WFEO in the area of technical collaboration to define and meet the needs of engineers and engineering for civil infrastructure for present and future climate information, signed on 18 October and 20 November 2012.

Association of Private Meteorological Services (PRIMET)

Memorandum of Understanding between the WMO and the PRIMET providing PRIMET with a consultative status at WMO in accordance with the terms included in the MoU, signed on 23 September and 1 October 2012.

L'Assemblée des Fonctionnaires Francophones des Organisations Internationales

Accord de Coopération entre L'Assemblée des Fonctionnaires Francophones des Organisations Internationales et l'OMM, signed on 8 August 2012.

EWHA Womans University

Memorandum of Understanding between EWHA Womans University, Republic of Korea, and the WMO regarding the EWU-WMO Fellowships Education Programme, signed on 24 may 2012.

Leibniz Universität Hannover, Faculty of Civil Engineering and Geodetic Science (LUH)

Memorandum of understanding between WMO and LUH, Germany regarding the establishment of Fellowships for Training of Experts from selected WMO Members studying International Masters Programme in Water Resources and Environmental Management, signed on 20 March and 5 April 2012.

Nanjing University of Information Science and Technology (NUIST)

Memorandum of Understanding between WMO and NUIST, China regarding NUIST-WMO Fellowships Education Programme, signed on 22 December 2011 and 15 January 2012.

10. World Intellectual Property Organization[845]

The World Intellectual Property Organization (WIPO) has nine strategic goals, which provide the framework for its current strategic plan: (1) maintaining a balanced evolution of the international normative framework for intellectual property (IP); (2) providing premier global IP services; (3) facilitating the use of IP for development; (4) coordinating and developing the global IP infrastructure; (5) becoming a world reference source for IP information and analysis; (6) fostering international cooperation on building respect for

[845] For official documents and more information on the World Intellectual Property Organization, see http://www.wipo.int.

IP; (7) addressing IP in relation to global policy issues; (8) creating a responsive communications interface between WIPO, its member States and all stakeholders; and (9) making an efficient administrative and financial support structure to enable WIPO to deliver its programs.[846]

Acting within those goals, in 2012 WIPO took legal actions that fell into the following four areas of focus: (*a*) service, by administering systems to facilitate obtaining protection internationally for patents, trademarks, designs and appellations of origin as well as systems of dispute resolution; (*b*) law, by helping develop the international legal IP framework in line with society's evolving needs; (*c*) infrastructure, by building collaborative networks, platforms and tools to share knowledge and simplify IP transactions; and (*d*) development, by building capacity in the use of IP to support economic, social and cultural development. The summary below will discuss what actions WIPO took to help advance international IP law and policy in these areas.

(*a*) Service: Facilitating international IP protection

WIPO continued to provide services, based on international agreements, which enabled users in member States to enjoy international protection of their IP within centralized frameworks for patents, trademarks, industrial designs, and appellations of origin.

(i) *Patent Cooperation Treaty (PCT)*[847]

According to 2012 annualized provisional data, 191,850 PCT applications were filed. This represented a continued growth in applications since the last yearly decline in filings in 2009.[848] On 9 October, at the close of its forty-third session, the PCT Union amended its regulations regarding necessary elements of PCT patent applications.[849]

(ii) *Madrid System for Trademarks*

During 2012, there were 41,954 trademarks registered under the Madrid System. The International Bureau of WIPO received 44,018 international applications, which was a record in the history of WIPO. Similar to the PCT, this showed the continued growth since 2009.

(iii) *Hague System for Industrial Designs*

During 2012, there were 11,971 industrial designs registered. Unlike patents and trademarks, growth in the number of industrial designs registrations has continued since 2005.[850]

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[846] WIPO, Midterm Strategic Plan for WIPO, 2010-2015, document A/48/3.

[847] United Nations, *Treaty Series*, vol. 1160, p. 231.

[848] WIPO, The International Patent System: Monthly Statistics Report (February 2013).

[849] For the text of the amendments, see PCT Notification No. 202.

[850] WIPO, The International Patent System: Monthly Statistics Report (February 2013).

(iv) *Lisbon System for Appellations of Origin*

Fewer appellations of origin were recorded compared to the other international forms of IP. In 2012, there were six new appellations of origin registered.

(v) *WIPO Arbitration and Mediation Center*

Continued growth was seen in the use of the Uniform Domain Name Dispute Resolution Policy (UDRP), the basis for most alternative dispute resolution (ADR) regarding trademark infringement in domain names. In 2012, 2,884 cases were filed with the WIPO Arbitration and Mediation Center ("Center") under procedures based on the UDRP compared to 2,764 in 2011.

The Center also served as focal point for dispute resolution for new generic top level domains (gTLDs) as the Internet Corporation for Assigned Names and Numbers (ICANN) began the application process for new gTLDs in 2012. The new gTLD applications included the first-ever applications from the African and Latin American and the Caribbean regions. In addition, the Center became the exclusive provider for "pre-delegation" legal rights objections to new gTLDs where the objection to the applied-for character string is based on a trademark.

The Center actively monitored the development by ICANN of further rights protection mechanisms for new gTLDs. Notably, WIPO continued to provide input for the deliberations of ICANN on preventive protection for domains and domain names corresponding to the names and acronyms of international intergovernmental organizations (IGOs) in new gTLDs.

The Center was instrumental in promoting the use of ADR for other IP disputes. In 2012, the Center held its annual arbitration workshop in Singapore, which marked the first time this event took place outside the Swiss headquarters of WIPO. The Center expanded cooperation with national IP offices in the application of ADR to IP disputes before such offices.

(*b*) Law: Developing the international IP framework

As the central organization for international IP law, WIPO continued to administer several treaties. In 2012, 33 new instruments of ratification, accession, or extension were received.

(i) *New treaties to be administered by WIPO*

WIPO convened a diplomatic conference in Beijing, China, from 20 to 26 June 2012, which resulted in the adoption of the Beijing Treaty on Audiovisual Performances, 2012.[851] Forty-eight States signed the Treaty at the conclusion of the diplomatic conference.[852] Before the end of the year, seven more states signed. The Beijing Treaty endeavors to pro-

[851] For the text of the treaty, see chapter IV.B of this publication. .

[852] Memorandum by the Secretariat: Signature of the Beijing Treaty on Audiovisual Performances, document AVP/DC/22.

tect the rights of performers to the exploitation of their work when fixed in audiovisual form.

(ii) *Treaty denunciations and termination notices*

a. Morocco and Spain

Both Morocco and Spain notified their acceptance of the termination of the London Act of the Hague Agreement Concerning the International Registration of Industrial Designs, 1934.[853] The London Act was recommended for termination to promote uniformity in international law concerning industrial designs.[854] The London Act would continue in force until all parties had denounced or notified their acceptance of termination of the Act. The London Act had been, however, declared frozen in application.[855] At the time of this publication, active treaties for industrial designs were the Geneva Act, 1999, and the Hague Act, 1960, of the Hague Agreement.

b. Syrian Arab Republic

The Syrian Arab Republic notified its denunciation of the Madrid Agreement Concerning the International Registration of Marks, which would take effect on 29 June 2013. The Syrian Arab Republic remained a party to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989.[856]

(iii) *Standing Committee on the Law of Patents (SCP)*

The eighteenth session of the SCP was held from 21 to 25 May 2012. The SCP discussed the current legal and global developments in exceptions and limitations to patent rights, the quality of patents (including opposition systems), confidentiality of communications between clients and their patent advisors, patents and health, the transfer of technology, and the contribution of the SCP to the Development Agenda.[857]

(iv) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)*

The twenty-seventh session of the SCT was held from 18 to 21 September 2012. In the context of industrial designs, the SCT made progress on an international instrument on design law. In the context of trademarks, the SCT discussed trademarks and the Internet,

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[853] League of Nations, *Treaty Series*, vol. 205, p. 179.

[854] See document entitled "Proposal to freeze the application of the 1934 Act", adopted by the Extraordinary Meeting of Contracting States to the London (1934) Act of the Hague Agreement Concerning the International Registration of Industrial Designs, H/EXTR/09/1.

[855] See document entitled "Freezing of the application of the London (1934) Act of the Hague Agreement", adopted by the Contracting States to the London Act on 25 September 2009, H/A/28/3.

[856] United Nations, *Treaty Series*, vol. 828, p. 389.

[857] WIPO, summary of the Chair of the eighteenth session of the Standing Committee on the Law of Patents (21 to 25 May 2012), document SCP/18/11.

particularly as it relates to ICANN and the expansion of the domain name system, as well as International Nonproprietary Names for Pharmaceutical Substances. The SCT also requested a study on national laws regarding the use of the names of States as trademarks or as elements thereof.[858]

The twenty-eighth session of the SCT was held from 10 to 14 December 2012. This session was devoted exclusively to industrial designs. The SCT progressed further towards a "Design Law Treaty". The progress included a request to the Secretariat of WIPO for a description of the relationship between the Hague System for the International Registration of Industrial Designs and the draft design law treaty.[859]

(v) *Standing Committee on the Law of Copyright and Related Rights (SCCR)*

The twenty-fourth session of the SCCR was held from 16 to 25 July 2012. The SCCR worked on draft international legal instruments on copyright limitations and exceptions for educational and research institutions and persons with other disabilities, libraries and archives, and visually impaired persons and other individuals with print disabilities and/or other disabilities. The SCCR also adopted a working document for a treaty for the protection of broadcasting organizations.[860]

The twenty-fifth session of the SCCR was held from 19 to 23 November 2012. Further discussion occurred in the SCCR on limitations and exceptions for visually impaired persons and other individuals with print disabilities, educational and research institutions as well as libraries and archives. Due to continued progress on the working document for a treaty for the protection of broadcasting organizations, the SCCR agreed to hold an intersessional meeting in 2013 to decide on whether to convene a diplomatic conference in 2014. The SCCR recommended that the General Assembly of WIPO convene a diplomatic conference on an international instrument/treaty on limitations and exceptions for visually impaired persons/persons with print disabilities as adopted by the SCCR.[861] The General Assembly of WIPO, meeting in extraordinary session in December 2012, agreed to convene the Diplomatic Conference to conclude a Treaty to facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, in Morocco from 17 to 28 June 2013.

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[858] *Ibid*., report of the twenty-seventh session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (18 to 21 September 2012), document SCT/27/11.

[859] *Ibid*., report of the twenty-eight session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (10 to 14 December 2012), document SCT/28/7.

[860] *Ibid*., draft report of the twenty-fourth session of the Standing Committee on the Law of Copyright and Related Rights (16 to 25 July 2012), document SCCR/24/12 Prov.

[861] *Ibid*., conclusions of twenty-fifth session of the Standing Committee on Copyright and Related Rights.. See also, "Draft text of an international instrument/treaty on limitations and exceptions for visually impaired persons/persons with print disabilities", document SCCR/25/2.

(vi) *Intergovernmental Committee on Intellectual Property and Genetic Resources (GRs), Traditional Knowledge (TK) and Folklore (TCEs) (the IGC)*

In 2011, the WIPO General Assembly renewed the mandate of the IGC for two years and requested that it expedite its text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) that would ensure the effective protection of GRs, TK and TCEs. Three meetings of the IGC were held in 2012, each devoted to one subject of its mandate. At its twentieth session, from 14 to 22 February 2012, the IGC addressed GRs and developed a work-in-progress consolidated document on intellectual property and GRs.[862] At its twenty-first and twenty-second sessions, from 16 to 20 April and from 9 to 13 July 2012, the IGC met regarding TK and TCEs, respectively, and transmitted two sets of draft articles on each subject matter for consideration by the General Assembly of WIPO.[863]

(vii) *Working Group on the Development of the Lisbon System*

During its fifth and sixth sessions, held in 2012, the Working Group continued its discussion of the further development of the Lisbon System and the contemplated the establishment of an international registration system for geographical indications and appellations of origin. Under its two-fold mandate, the Working Group worked towards: (1) a revision of the Lisbon Agreement that would involve the refinement of its current legal framework and the inclusion of the possibility of accession by intergovernmental organizations, while preserving the principles and objectives of the agreement; and (2) the establishment of an international registration system for geographical indications.

(*c*) Infrastructure: Sharing knowledge and simplifying IP transactions

(i) *Cooperation between WIPO and other IP organizations*

In 2012, WIPO and the European Patent Office (EPO) signed the first technical assistance agreement between the organizations. The goal of the agreement was to facilitate use of the PCT system and increase its use by patent applicants. The agreement also aimed at enhancing the quality and efficiency of the patent granting process, including patent classification and searching, and improving access to patent information. This agreement was of significance to WIPO since the EPO currently is the largest International Searching Authority, performing the function for about 40 per cent of PCT patent applications.

(ii) *Medicines Patent Pool*

On 27 June 2012, WIPO hosted a Global Challenges Seminar on Licensing and Prices: New Approaches in the Pharmaceutical Sector. The Seminar was devoted to the use of the Medicines Patent Pool to expand access to HIV anti-retroviral medications to developing and least developed countries (LDCs). Members of the international community as well

[862] *Ibid*., Decisions of the twentieth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

[863] *Ibid*., see document WO/GA/41/15.

as stakeholders on both the innovation and generic side of the pharmaceutical industry attended and presented at this Seminar.

(iii) *Use of the Re:Search medical database*

In October 2011, WIPO launched WIPO Re:Search, a new public database of IP that gave researchers royalty-free access to proprietary information for researching treatments for neglected tropical diseases, malaria, and tuberculosis, and royalty-free sales to LDCs of any medicines made from this research for neglected tropical diseases. The first ever agreements made using the Re:Search database were announced in August 2012 and included research on treatments for Chagas disease, sleeping sickness, schistosomiasis (snail fever) and tuberculosis.

(iv) *Copyright tools and services*

WIPO continued to be actively involved in developing tools and services within the copyright field. For example, WIPO developed copyright data management systems, which allow rights holders and Governments to keep track of copyrighted works which are created and/or exploited. Two such software systems were the WIPO Collective Management System (WIPOCOS) and Gestión de Derecho de Autor (GDA).[864] WIPO also played a key role in the Trusted Intermediary Global Accessible Resources (TIGAR) Project which was designed to ensure greater practical access to copyrighted material for visually impaired persons. The transition from pilot project to long term viability was discussed in Singapore on 6 and 7 November 2012.

(*d*) Development: Using IP to support economic development

Committee on Development and Intellectual Property (CDIP)

At the ninth session of the CDIP from 7 to 11 May 2012, the CDIP discussed, *inter alia*, access to specialized databases, "start-up" of national IP academies, flexibilities in IP law, and the relation of IP law to competition law and policy.[865] It also adopted a proposal to use IP to Strengthen and Develop the Audiovisual Sector in Burkina Faso and Certain African Countries.[866]

At the tenth session of the CDIP from 12 to 16 November 2012, the CDIP discussed, *inter alia*, the contribution of WIPO to the United Nations Millennium Development Goals, an external review of technical assistance provided by WIPO, and continued dis-

[864] *Ibid*., Progress reports of the tenth session of the Committee on Development and Intellectual Property (12 to 16 November 2012), documents CDIP/10/2.

[865] *Ibid*., Summary by the Chair of the ninth session of the Committee on Development and Intellectual Property (7 to 11 May 2012).

[866] *Ibid*., Draft report of the ninth session of the Committee on Development and Intellectual Property (7 to 11 May 2012), document CDIP/9/17 Prov.

cussions on flexibilities in the IP system. The CDIP also approved phase II of a project to Develop Tools for Access to Patent Information.[867]

11. International Fund for Agricultural Development[868]

(*a*) Membership

At its 35th session (22-23 February 2012), the Governing Council approved the non-original membership in the International Fund for Agricultural Development (IFAD) of Estonia and South Sudan.[869]

(*b*) Partnership agreements and memoranda of understanding

Partnership agreement between IFAD and Agence Française de Développement

Further to a cooperation agreement signed on 17 November 2006, IFAD and Agence Française de Développement entered, on 3 October 2012, into a new partnership agreement in order to develop an enhanced partnership between the parties, with the principal objective of carrying out joint operations, and to set forth an overall framework as well as procedures for implementation and monitoring. The Executive Board of IFAD was informed about this agreement at its 107th session (12-13 December 2012).[870]

(*c*) Legal developments and other

(i) *Revisions to the Financial Regulations of IFAD*

At its 35th session, the Governing Council considered document GC 35/L.7 and adopted, on 22 February 2012, resolution 168/XXXV approving the revision of the Financial Regulations of IFAD.

(ii) *IFAD Policy on Gender Equality and Women's Empowerment*

At its 105th session, the Executive Board approved the IFAD Policy on Gender Equality and Women's Empowerment.[871] The goal of the policy was to deepen the impact and strengthen the sustainability of IFAD supported initiatives, with a purpose of increasing IFAD impact on gender equality and strengthening women's empowerment in poor rural areas.

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[867] *Ibid*., summary by the Chair of the tenth session of the Committee on Development and Intellectual Property (12 to 16 November 2012).

[868] For official documents and more information on the International Fund for Agricultural Development, see http://www.ifad.org.

[869] IFAD, resolutions 164/XXXV and 165/XXXB, respectively.

[870] *Ibid*., document EB 2012/107/INF.6.

[871] *Ibid*., document EB 2012/105/R.2/Rev.1.

(iii) *Establishment of a Trust Fund for the Adaptation for Smallholder Agricultural Programme*

The Executive Board approved, at its 105th session, the resolution on the establishment of a Trust Fund for the IFAD Adaptation for Smallholder Agriculture Programme.[872] The resources of the Trust Fund would be administered by IFAD and would be used exclusively for the purpose of financing, in the form of grants, components of the IFAD-financed core portfolio of projects and programmes to increase the resilience of small farmers to climate change.

(iv) *Revision of the lapse-of-time procedure for approval of IFAD-funded projects and programmes*

The application of the lapse-of-time procedure was approved by the Executive Board at its 98th session (December 2009) to streamline the approval process of projects and programmes and enable the Board to devote more time to strategic policies and oversight responsibilities during its sessions.[873] The procedure was governed by rule 24 of the Rules of Procedure of the Executive Board. Under this procedure, eligible proposals were not placed on the agenda of the Executive Board session but rather posted on IFAD website and communicated to Board members for approval on a lapse-of-time basis. Proposals were deemed to be approved by the Executive Board if no request for consideration at a Board session was received by a specified deadline.

During the same 98th session, it was determined that, unless otherwise decided by the Board, rule 24 would not be applied when the amount of project or programme financing exceeded SDR 10 million (approximately US$15 million), and that IFAD Management would have the right, irrespective of the amount of financing proposed, to decide to present a project to the Board for formal discussion.

During its 106th session, the Executive Board approved the following increase in the lapse-of-time procedure ceiling:

> "Unless otherwise decided by the Executive Board, it is understood that rule 24 of the Rules of Procedure of the Executive Board shall be applied for projects and programmes financing not exceeding SDR 17 million (approximately US$25 million). However, IFAD Management reserves the right, as it deems necessary, to present a project or programme to the Board for discussion irrespective of the amount of its financing."[874]

(v) *Establishment of the Reimbursable Technical Assistance (RTA) Programme*

At its 106th session, the Executive Board approved the instrument establishing the Reimbursable Technical Assistance (RTA) Programme.[875] Technical assistance under the RTA consisted of technical and policy advice to be provided by the Fund to developing

[872] *Ibid*., EB 2012/105/R.45, annex.

[873] *Ibid*., EB 2009/98/R.15/Rev.1.

[874] *Ibid*., EB 2012/106/R.9.

[875] *Ibid*., EB 2012/106/R.28/Rev.1.

member States on a reimbursable basis, upon demand by Governments, and according to IFAD capacity to deliver the services requested.

(vi) *Debt settlement agreement with Cuba*

The Executive Board, at its 106th session, approved the terms and conditions of the debt settlement agreement negotiated with Cuba and authorized the President of IFAD to sign the debt settlement agreement.[876]

(vii) *Rescheduling the debt of Sudan*

At its 106th session, the Executive Board approved a proposal for the rescheduling of the debt of Sudan.[877]

(viii) *Revision of IFAD Investment Policy Statement*

The Fund's Investment Policy Statement[878] was adopted by the Executive Board during its 103rd session (14-15 September 2011) in order to address the need to establish the basic directives for the investments of IFAD resources and with the aim of abiding, as far as possible and within the objective and functions set forth in the Agreement Establishing IFAD,[879] by the Principles of the United Nations Global Compact. At its 107th session, the Executive Board approved a series of changes to this policy.[880]

12. United Nations Industrial Development Organization[881]

(*a*) Constitutional matters

On 13 December 2012, the Government of New Zealand deposited with the Secretary-General of the United Nations an instrument of denunciation of the Constitution of the United Nations Industrial Development Organization (UNIDO). In accordance with article 6(2) of the Constitution, the denunciation would take effect on the last day of the fiscal year following that during which such instrument was deposited, i.e., on 31 December 2013.

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[876] *Ibid*., EB 2012/106/R.36/Rev.1.

[877] *Ibid*., EB 2012/106/R.37.

[878] *Ibid*., EB 2011/104/R.43.

[879] United Nations, *Treaty Series*, vol. 1059, p. 191.

[880] IFAD., EB 2012/107/R.32.

[881] For official documents and more information on the United Nations Industrial Development Organization, see http://www.unido.org.

(*b*) Agreements and other arrangements concluded in 2012[882]

(i) *Agreements with States*[883]

Armenia

Trust fund agreement between UNIDO and the Innovation and Industrial Development Fund, Republic of Armenia, regarding the implementation of a project in Armenia entitled "Establishment of a Centre for International Industrial Cooperation (CIIC) in Armenia", signed on 23 October and 5 November 2012.

Bolivia and the United Nations

Framework cooperation agreement between the United Nations system in Bolivia and the Plurinational State of Bolivia, signed on 16 January 2012.

Cameroon and the European Union

Amendment No.2 to the contribution agreement between UNIDO, the Government of the Republic of Cameroon and the European Union concluded on 16 and 23 April and 6 May 2008 regarding the implementation of a project in Cameroon entitled "Pilot programme in support for upgrading, standardization and quality in Cameroon", signed on 18, 27 and 30 April 2012.

Chad

Trust fund agreement between UNIDO and the Republic of Chad regarding the implementation of a project in Chad entitled "Promoting renewable energy based minigrid for rural electrification and productive uses", signed on 19 July and 15 August 2012.

China

Letter of intent between UNIDO and the Foreign Economic Cooperation Office, Ministry of Environmental Protection, the People's Republic of China (FECO/MEP), signed on 19 April 2012.

Exchange of letters between UNIDO and the China International Center for Economic and Technical Exchanges, Ministry of Commerce, the People's Republic of China, amending the memorandum of understanding concluded on 28 November 2011, signed on 16 and 25 October 2012.

Côte d'Ivoire and the United Nations Environment Programme (UNEP)

Implementation agreement between UNIDO, UNEP and the Ministry of Environment and Sustainable Development of Côte d'Ivoire regarding the implementation of a project in Côte d'Ivoire entitled "Reducing mercury risks from artisanal and small scale gold mining (ASGM) in Côte d'Ivoire", signed on 3, 19 and 26 October 2012.

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[882] The list contains signed agreements or arrangements deposited with the Office of Legal Affairs of UNIDO for safekeeping. In 2012, UNIDO also concluded numerous agreements with other entities.

[883] Including Governments and regional governments or provinces.

Ecuador

Letter of agreement between UNIDO and the Ministry of Electricity and Renewable Energy (MEER) regarding the implementation of a project in Ecuador entitled "Industrial energy efficiency in Ecuador", signed on 15 and 29 October 2012.

Finland

Exchange of letters constituting an agreement between UNIDO and the Ministry for Foreign Affairs of Finland on the utilization of the Finnish contribution to UNIDO in the year 2012, signed on 25 June and 3 July 2012.

France

Trust fund agreement between UNIDO and the French Development Agency (AFD) regarding the implementation of a project in Mexico entitled "Demonstration project for disposal of unwanted ozone depleting substances (ODS) in Mexico", signed on 18 June 2012.

Trust fund agreement between UNIDO and the French Development Agency (AFD) regarding the implementation of a project entitled "Filiere or equitable et reduction de l'utilisation du mercure dans l'orpaillage en Afrique de l'Ouest", signed on 18 June 2012.

Agreement between UNIDO and the City of Marseille regarding the UNIDO Investment and Technology Promotion Office (ITPO) in Marseille, signed on 25 June and 23 July 2012.

Trust fund agreement between UNIDO and the French Development Agency (AFD) regarding the implementation of a project entitled "Green industry initiative", signed on 30 November and 18 December 2012.

Germany

Arrangement between UNIDO and the Government of the Federal Republic of Germany regarding the project entitled "Strengthening the local production of essential medicines in developing countries through advisory and capacity-building support (phase IV)", signed on 21 November 2012.

Guinea

Trust fund agreement between UNIDO and the Government of the Republic of Guinea regarding the implementation of a project entitled "Promouvoir le developpement de systemes de mini centrales hydro-électriques à usages multiples", signed on 2 April 2012.

Israel

Memorandum of understanding between UNIDO and Israel's Agency for International Development Cooperation, Ministry of Foreign Affairs (MASHAV), signed on 14 May 2012.

Italy

Joint declaration between UNIDO Investment and Technology Promotion Office in Italy and the Ministry of Economic Development of the Republic of Italy regarding the action plan to foster the promotion of suitable technologies for sustainable development, signed on 31 October 2012.

Mexico and the United Nations

Cooperation agreement between the United Nations system in Mexico and the Government of the State of Hidalgo of the United Mexican States regarding cooperation on human development and the millennium development goals, signed on 15 February 2012.

Mozambique and the European Union

Contribution agreement between UNIDO, the Republic of Mozambique and the European Union regarding the implementation of a project in Mozambique entitled "COMPETIR com Qualidade – private sector and quality promotion programme for Mozambique", signed on 15 and 26 June 2012.

Nigeria

Memorandum of understanding between the United Nations Industrial Development Organization and the Lagos State Government (LASG), signed on 14 June 2012.

Aide memoire between UNIDO and the Nigerian Educational Research Development Council to support entrepreneurship curriculum development in senior secondary schools in Nigeria, signed on 18 and 24 July 2012.

Consultancy cooperation agreement between UNIDO and the Federal Ministry of Agriculture and Rural Development regarding the implementation of a project in Nigeria entitled "Master plan and feasibility assessment for staple crop processing zones in Nigeria", signed on 18 December 2012.

Norway

Administrative agreement for project funding between UNIDO and the Norwegian Agency for Development Cooperation (Norad) regarding the implementation of a project entitled "Strengthening the national quality infrastructure (NQI) for trade – phase I – preparatory assistance including national quality policy" signed on 2 and 9 November 2012.

Administrative agreement for project funding between UNIDO and the Norwegian Agency for Development Cooperation (Norad) regarding the implementation of a project in Namibia entitled "Trade capacity-building (TCB) for exports in Namibia" signed on 5 and 9 November 2012.

Administrative agreement for project funding between UNIDO and the Norwegian Agency for Development Cooperation (Norad) regarding the implementation of a project in Swaziland entitled "Market access and trade facilitation support for Swaziland, through conformity assessment infrastructure development" signed on 19 and 29 November 2012.

Republic of Korea

Arrangement between UNIDO and the Ministry of Foreign Affairs and Trade of the Republic of Korea on a special-purpose contribution to the Industrial Development Fund, signed on 10 May 2012.

Trust fund agreement between UNIDO and the Korea International Cooperation Agency (KOICA) regarding the implementation of a project in the Kingdom of Cambodia entitled "Creating employment opportunities and ensuring effective e-waste management in Cambodia", signed on 29 June 2012.

Sweden

Agreement between UNIDO and Sweden regarding the implementation of a project entitled "A private public partnership project – training academy in heavy duty equipment and commercial vehicles in Ethiopia", signed on 28 June and 10 July 2012.

Agreement between UNIDO and Sweden regarding the implementation of a project entitled "Learning and knowledge development facility: a SIDA-UNIDO industrial skills development resource", signed on 26 June and 27 July 2012.

Amendment to the agreement between UNIDO and Sweden concluded on 10 and 14 December 2010 regarding the project entitled "Support the implementation of the regional Arab standardization strategy with focus on the regional coordination on accreditation", signed on 5 and 7 December 2012.

Switzerland

Letter of agreement between UNIDO and the State Secretariat for Economic Affairs (SECO) regarding the implementation of a project in Indonesia entitled "National resource efficient and cleaner production (RECP) programme Indonesia", signed on 21 May 2012.

Letter of agreement between UNIDO and the State Secretariat for Economic Affairs (SECO) regarding the implementation of a project in Tunisia entitled "Reforcement du programme de production propre en Tunisie", signed on 22 November and 3 December 2012.

Letter of agreement between UNIDO and the Swiss Confederation, represented by the Federal Department of Foreign Affairs, acting through the Swiss Agency for Development and Cooperation (SDC) regarding the implementation of a project entitled "Human security through inclusive social-economic development in Upper Egypt", signed on 29 November and 3 December 2012.

Letter of agreement between UNIDO and the State Secretariat for Economic Affairs (SECO) regarding the implementation of a project in Ghana entitled "Improving sustainable value chains for exports from Ghana", signed on 3 and 11 December 2012.

United States

Program contribution agreement between UNIDO and the United States of America, acting through the United States Agency for International Development (USAID) regarding the implementation of a project in Tunisia entitled "Tackling youth employment in Tunisia", signed on 28 September 2012.

Cooperative agreement between UNIDO and the Wadsworth Center, New York State Department of Health, signed on 13 and 28 March 2012.

Uruguay and the United Nations Environment Programme (UNEP)

Amendment to the implementation agreement between UNIDO, the Government of Uruguay and UNEP regarding the implementation of a project entitled "Sound management for mercury products", signed on 24 January, 28 March and 16 April 2012.

Viet Nam

Joint declaration between UNIDO Investment and Technology Promotion Office in Italy and the Agency for Industrial Promotion, Ministry of Industry and Trade of the Socialist Republic of Viet Nam regarding the action plan to increase competitiveness and to foster industrial collaboration between Italian and Vietnamese stakeholders, signed on 18 September 2012.

(ii) *Agreements concluded with the United Nations, its funds, programmes, specialized and related agencies*

Multilateral agreements and arrangements

Memorandum of understanding between the participating United Nations organizations, United Nations Resident Coordinator, and the United Nations Development Programme (UNDP) regarding the operational aspects of the Viet Nam One Plan Fund II, signed on 8, 12, 13 and 23 March 2012.

Memorandum of understanding between the organizations and entities of the United Nations system and UNDP regarding arrangements for the renovation of premises for the creation of the Green One UN House in Hanoi, Viet Nam, signed on 14, 18, 20, 25, 26, and 27 June 2012.

Partnership agreement between UNIDO, the participating United Nations organizations and 17 partners regarding Souk-At-Tanmia initiative, signed on 12 July and 3 October 2012.

United Nations Office on Drugs and Crime (UNODC)

Memorandum of understanding between UNIDO and UNODC, signed on 19 March 2012.

United Nations Development Programme (UNDP)

Contribution agreement between UNIDO and UNDP regarding the implementation of a project entitled "Development of export consortia in the Brunca region of Costa Rica in the agro-industry and tourism sectors", signed on 23 and 30 July 2012.

Contribution agreement between UNIDO and UNDP regarding the recruitment of the "Delivering as One (DaO) Green Economy" Focal Point for Mauritius and Seychelles, signed on 6 December 2012.

United Nations Office for Project Services (UNOPS)

Agreement between UNIDO and UNOPS regarding the implementation of a project in Burundi entitled "Renforcement des capacités commerciales du Burundi", signed on 11 and 20 July 2012.

Food and Agriculture Organization of the United Nations (FAO)

Amendment No.1 to the inter-agency agreement between UNIDO and FAO concluded on 5 and 22 July 2011 regarding the implementation of a project in Sudan entitled "Integrated food security project (IFSP) in Kassala, Sudan", signed on 25 September and 4 October 2012.

World Intellectual Property Organization (WIPO)

Relationship agreement between UNIDO and WIPO, signed on 12 April 2012.

United Nations World Tourism Organization (UNWTO)

Exchange of letters between UNIDO and UNWTO constituting a supplementary letter of agreement regarding the implementation of a project entitled "Demonstrating and capturing best practices and technologies for the reduction of land-sourced impacts resulting from coastal tourism", signed on 12 and 23 July 2012.

International Atomic Energy Agency (IAEA)

Practical arrangements between UNIDO and IAEA, signed on 18 September 2012.

World Trade Organization (WTO)

Implementation assignment between UNIDO and WTO regarding the implementation of a project entitled "Enhancing the compliance and productive capacities and competitiveness of the cinnamon value chain in Sri Lanka", signed on 8 and 20 June 2012.

(iii) *Agreements concluded with other intergovernmental organizations*

Asian Development Bank (ADB)

Joint declaration between UNIDO and the Asian Development Bank, signed on 12 September 2012.

East African Community (EAC) and IPACK-IMA S.p.A

Letter of agreement between UNIDO, the EAC and IPACK-IMA S.p.A. concerning the processing and packaging exhibition 2014 in the EAC region, signed on 4 July 2012.

European Union (EU)

Contribution agreement between UNIDO and EU regarding the implementation of a project entitled "Projet d'appui à la mise à niveau de la Formation Professionnelle en Côte d'Ivoire", signed on 16 and 30 March 2012.

Contribution agreement between UNIDO and EU regarding the implementation of a project in Haiti entitled "Programme d'appui au Ministère du Commerce et de l'Industrie (MCI): soutien aux infrastructures de qualité/Renforcement du Bureau Haïtien de Normalisation (BHN)", signed on 30 October and 5 November 2012.

European Union (EU) and the West African Economic and Monetary Union (UEMOA)

Addendum No. 5 to the contribution agreement between UNIDO, EU and UEMOA concluded on 6 June 2007 regarding the implementation of a project entitled "Support for competitiveness and harmonization of technical barriers to trade (TBT) measures and sanitary and phyto-sanitary (SPS) measures", signed on 30 July and 30 August 2012.

Global Environment Facility (GEF)

Grant agreement between UNIDO and GEF signed on 18 and 19 June 2012.

International Organization for Migration (IOM)

Memorandum of understanding between UNIDO and IOM regarding occupancy and use of common premises at Freetown, Sierra Leone, signed on 27 August 2012.

Latin American Development Bank (CAF)

Joint declaration between UNIDO and CAF, signed on 22 November 2012.

13. Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization[884]

(*a*) Membership

The Preparatory Commission is composed of States signatories to the 1996 Comprehensive Nuclear-Test-Ban Treaty, 1996 (CTBT).[885] By the end of 2012, the CTBT had 183 States signatories.

During 2012, two States (Indonesia and Guatemala) deposited instruments of ratification of the CTBT with the United Nations Secretary-General as Depositary. In order for the Treaty to enter into force, ratification by the following eight States is needed: China,

[884] For official documents and more information on the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, see http://www.ctbto.org.

[885] Doc. A/50/1027. See also *United Nations Juridical Yearbook 1996* (United Nations Publications, Sales No. 01.V.10), p. 311.

Democratic People's Republic of Korea, Egypt, India, Israel, Islamic Republic of Iran, Pakistan and the United States.

(*b*) Legal status, privileges and immunities and international agreements

In addition to the Headquarters Agreement, legal status, privileges and immunities are granted to the Preparatory Commission through "Facility Agreements" concluded with each of the 89 States which are hosting one or more of the 337 monitoring facilities comprising the International Monitoring System (IMS) foreseen to be established under the CTBT. In 2012, the facility agreement with Uganda was concluded. The status at the end of 2012 was 43 concluded facility agreements out of which 35 have entered into force.

Pursuant to the decision of the Commission in 2006 to exceptionally allow IMS data to be shared with tsunami warning centres approved as such by the Intergovernmental Oceanographic Commission of UNESCO,[886] in 2012 the Preparatory Commission concluded with the Republic of Korea an Agreement concerning the Use of Primary Seismic, Auxiliary Seismic and Hydroacoustic Data for Tsunami Warning Purposes based on the model approved by the Commission. This brings the total number of such agreements to eleven, concluded with: Australia, France, Indonesia, Japan, Malaysia, Philippines, Republic of Korea, Thailand, Turkey and two with the United States.

In 2012, the Preparatory Commission approved the final draft of the Social Security Agreement with Austria. A Memorandum of Understanding was also concluded with the World Food Programme for collaboration in the implementation of the Commission's Enterprise Resource Planning system.

To provide for the necessary privileges and immunities and arrangements for the conduct of workshops or training courses outside of Austria, 11 exchanges of letters were concluded with host States.

(*c*) Legislative assistance activities

Pursuant to paragraph 18 of the annex to the 1996 Resolution Establishing the Preparatory Commission, the Provisional Technical Secretariat of the Preparatory Commission continued to provide advice and assistance upon request to States in three areas: (*a*) legal and technical information about the CTBT in order to facilitate signature or ratification of the Treaty; (*b*) legal and administrative measures necessary for the implementation of the Treaty; and (*c*) national measures necessary to enable activities of the Preparatory Commission during the preparatory phase, in particular those related to the provisional operation of the IMS.

In 2012, the Secretariat continued promoting the exchange of information between States signatories on the subject of national implementation measures. As part of its Programme of Legal Assistance, the Secretariat organized workshops on national implementation Measures in order to provide a venue for States signatories interested in addressing the subject of national implementation measures for the CTBT and in participating in an exchange of information with other States. The aims of the workshops were the following:

[886] *Ibid.*, *2006* (United Nations Publications Sales No. 09.V.1). p. 256.

(i) promoting understanding and raising awareness of the measures needed to implement the CTBT; (ii) providing legal assistance to participating States in drafting CTBT implementing legislation; (iii) facilitating the exchange of information among participating States; and (iv) contributing to comparative analysis of existing national provisions and approaches for CTBT implementation.

The Secretariat provided comments and assistance in 2012 on 60 legal assistance requests from States parties or from within the Secretariat. It also maintained a Legislation Database on its website to facilitate the exchange of information on national implementing legislation as well as other documentary assistance tools, including the Legislation Questionnaire.

14. International Atomic Energy Agency[887]

(*a*) Member States of the International Atomic Energy Agency (IAEA)

In 2012, Dominica, Fiji, Papua New Guinea, Rwanda, Togo and Trinidad and Tobago became member States of the IAEA. By the end of the year, there were 158 member States.

(*b*) Privileges and immunities

In 2012, the status of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency[888] remained unchanged with 83 parties.

(*c*) Treaties under IAEA auspices

(i) *Convention on the Physical Protection of Nuclear Material*[889]

In 2012, Côte d'Ivoire, Saint Lucia and Viet Nam became party to the Convention. By the end of the year, there were 148 parties.

(ii) *Amendment to the Convention on the Physical Protection of Nuclear Material*[890]

In 2012, Georgia, Ghana, Israel, Lesotho, Luxembourg, Mexico, Saint Lucia, Sweden and Viet Nam adhered to the Amendment. By the end of the year, there were 61 contracting States.

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[887] For official documents and more information on the International Atomic Energy Agency, see http://www.iaea.org.

[888] United Nations, *Treaty Series*, vol. 374, p. 147.

[889] *Ibid*., vol. 1456, p. 101.

[890] IAEA, "Amendment to the Convention on the Physical Protection of Nuclear Material", *IAEA International Law Series*, No. 2, 2006.

(iii) *Convention on Early Notification of a Nuclear Accident*[891]

In 2012, Cambodia became party to the Convention. By the end of the year, there were 114 parties.

(iv) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*[892]

In 2012, the status of the Convention remained unchanged with 108 parties.

(v) *Convention on Nuclear Safety*[893]

In 2012, Cambodia became party to the Convention. By the end of the year, there were 75 parties.

(vi) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*[894]

In 2012, Bosnia and Herzegovina became party to the Joint Convention. By the end of the year, there were 64 parties.

(vii) *Vienna Convention on Civil Liability for Nuclear Damage*[895]

In 2012, the status of the Convention remained unchanged with 38 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage*[896]

In 2012, the United Arab Emirates became party to the Protocol. By the end of the year, there were 10 parties.

(ix) *Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention*[897]

In 2012, the United Arab Emirates became party to the Joint Protocol. By the end of the year, there were 27 parties.

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[891] United Nations, *Treaty Series*, vol. 1439, p. 275.

[892] *Ibid*., vol. 1457, p. 133.

[893] *Ibid*., vol. 1963, p. 293.

[894] *Ibid*., vol. 2153, p. 303.

[895] *Ibid*., vol. 1063, p. 265.

[896] *Ibid*., vol. 2241, p. 270.

[897] *Ibid*., vol. 1672, p. 293.

(x) *Convention on Supplementary Compensation for Nuclear Damage*[898]

In 2012, the status of the Convention remained unchanged with 15 signatories and four contracting States.

(xi) *Optional Protocol Concerning the Compulsory Settlement of Disputes*[899]

In 2012, the status of the Protocol remained unchanged with two parties.

(xii) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*[900]

In 2012, Bahrain, Burundi, Nepal and Palau concluded an RSA Agreement. By the end of the year, there were 121 member States which had concluded the RSA Agreement with the Agency.

(xiii) *Fifth Agreement to Extend the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA)*[901]

The Fifth Agreement to extend the 1987 RCA for a further period of five years, which was done in Bali on 15 April 2011, entered into force on 31 August 2011 and became effective as of 12 June 2012, upon expiration of the Fourth Agreement. In 2012, Australia, China, Japan, Malaysia, Nepal, Pakistan, Republic of Korea, Thailand and Viet Nam became party to the Agreement. By the end of the year, there were 12 parties to the Agreement.

(xiv) *African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA) — (Fourth Extension)*[902]

In 2012, Botswana, Burundi and Chad became party to the Agreement. By the end of the year, there were 34 parties.

(xv) *Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)*[903]

In 2012, the status of the Agreement remained unchanged with 21 parties.

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[898] IAEA, document INFCIRC/567.

[899] United Nations, *Treaty Series*, vol. 2086, p. 94.

[900] Model text available from http://ola.iaea.org (accessed on 31 December 2012).

[901] IAEA, document INFCIRC/167/Add.23.

[902] *Ibid*., document INFCIRC/377 and INFCIRC/377/Add.19 (Fourth extension).

[903] United Nations, *Treaty Series*, vol. 2338, p. 337.

(xvi) *Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA)*[904]

In 2012, the status of the Agreement remained unchanged with nine parties.

(xvii) *Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[905]

In 2012, the status of the Agreement remained unchanged with seven parties.

(xviii) *Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[906]

In 2012, the status of the Agreement remained unchanged with six parties.

(*d*) IAEA legislative assistance activities

In 2012, the Agency continued to provide legislative assistance to its member States within its technical cooperation programme. Country specific bilateral legislative assistance was provided to 18 member States through written comments and advice on drafting national nuclear legislation. The Agency also organized short-term scientific visits to headquarters for a number of individuals, allowing fellows to gain further practical experience in nuclear law.

The Agency organized the second session of the Nuclear Law Institute in Baden, Austria, from 23 September to 5 October 2012. The comprehensive two-week course, which used modern teaching methods based on interaction and practice, was established to meet the increasing demand by member States for legislative assistance and to enable participants to acquire a solid understanding of all aspects of nuclear law, as well as to draft, amend or review their national nuclear legislation. A total of 60 representatives from 51 member States participated. The Agency also continued to contribute to the activities organized at the World Nuclear University and the International School of Nuclear Law by providing lectures and funding participants through appropriate technical cooperation projects.

A Workshop for Diplomats on Nuclear Law was organized in July 2012 in order to provide diplomats from member States with a broad understanding of all aspects of nuclear law. The workshop was attended by 87 participants from 51 member States.

The Agency also enhanced its outreach activities through the development of new online training material and the third volume of the *Handbook on Nuclear Law*[907] which will cover various areas of nuclear law going beyond regulatory matters covered in the first two volumes.

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[904] *Ibid*., vol. 2203, p. 355.

[905] IAEA, document INFCIRC/703.

[906] *Ibid*.

[907] Reference information was still forthcoming at the time of this publication.

The second IAEA Treaty Event organized by the Secretariat took place during the 56th regular session of the General Conference, and provided Member States with a further opportunity to deposit their instruments of ratification, acceptance or approval of, or accession to, the treaties deposited with the Director General, notably those related to nuclear safety, nuclear security and liability for nuclear damage.

The Agency also organized "awareness missions" to member States in order to raise the awareness of national policy-makers about the importance of adhering to relevant international legal instruments adopted under the Agency's auspices.

(*e*) Conventions

In August 2012, the Contracting Parties to the Convention on Nuclear Safety (CNS) met in Vienna for their Second Extraordinary Meeting.[908] The Meeting discussed, *inter alia*, the lessons learned from, and the actions taken in response to, the Fukushima Daiichi nuclear accident, reviewed the effectiveness of the CNS, and considered a set of future actions for strengthening nuclear safety. The Organizational Meeting for the Sixth Review Meeting to be held in 2014 was also convened at the same time.

The Fourth Review Meeting of the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management was held in May 2012.[909] The meeting discussed proposals to increase the effectiveness of the Convention, including several amendments to the Guidelines regarding the Review Process, and agreed to continue discussions at intersessional meetings.

Representatives of the competent authorities identified under the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency met in Vienna in April 2012 for their Sixth Meeting. The meeting, *inter alia*, provided an opportunity to discuss the effectiveness of the Conventions, and agreed to explore proposals to enhance the implementation of notification and information-sharing arrangements.

(*f*) Civil liability for nuclear damage

The International Expert Group on Nuclear Liability (INLEX) continued to serve as the Agency's main forum for questions related to nuclear liability. At its 12th regular meeting held in May 2012, INLEX discussed and finalized recommendations on how to facilitate achievement of a global nuclear liability regime as had been requested by the IAEA Action Plan on Nuclear Safety.[910]

Five IAEA/INLEX missions aimed at informing national policy-makers about the relevant international legal instruments for achieving a global nuclear liability regime were

[908] For the Second Extraordinary Meeting's final summary report, see document CNS/ExM/2012/04/Rev.2.

[909] For the Fourth Review Meeting's final summary report, see document JC/RM4/04/Rev.2.

[910] See recommendation on how to facilitate achievement of a global nuclear liability regime, as requested by the IAEA Action Plan on Nuclear Safety, approved by the Board of Governors on 13 September 2011, and endorsed by the General Conference during its 55th regular session on 22 September 2011.

dispatched to the following member States in 2012: Viet Nam (March 2012), Republic of Korea (April 2012), Jordan (May 2012), South Africa (July 2012) and Ukraine (July 2012). Informal discussions continue to be held with other member States interested to host an IAEA/INLEX mission.

A Workshop on Civil Liability for Nuclear Damage was held in May 2012 at the IAEA headquarters and provided participants with an introduction to the subject.

(*g*) Non-binding instrument on the transboundary movement of scrap metal

Progress was made in the development of a Code of Conduct on the Transboundary Movement of Radioactive Material Inadvertently Incorporated into Scrap Metal and Semi-Finished Products of the Metal Recycling Industries. In January 2012, at the second open-ended meeting of technical and legal experts, the draft Code of Conduct which was prepared at the first meeting held in July 2011 was further developed. The draft document was formally sent to all member States in April 2012.[911]

This Code of Conduct aims at harmonizing the approach to be adopted by States if they discover the presence of radioactive material that may inadvertently be present in a consignment, and how such radioactive material should be managed and handled safely, so that it could be brought under regulatory control. A dedicated website was created to increase awareness of this issue and of the work currently being carried out. The Code of Conduct would supplement Control of Orphan Sources and Other Radioactive Material in the Metal Recycling and Production Industries,[912] which provided recommendations, principally within a national context, on the protection of workers, members of the public and the environment in relation to the control of radioactive material inadvertently present in scrap metal.

(*h*) Safeguards agreements

During 2012, a Safeguards Agreement pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) with Togo[913] entered into force. A Safeguards Agreement pursuant to the NPT was signed by Bosnia and Herzegovina but had not entered into force as of 31 December 2012. A Safeguards Agreement with Guinea-Bissau pursuant to the NPT was approved by the IAEA Board of Governors in 2012.

In 2012, Protocols Additional to the Safeguards Agreements between the IAEA and Iraq,[914] Namibia,[915] Republic of Moldova,[916] Togo[917] and Viet Nam[918] entered into force. An Additional Protocol was signed by Bosnia and Herzegovina but had not entered into force

[911] Available from http://www-ns.iaea.org.

[912] Safety Standards Series No. SSG-17.

[913] IAEA, document INFCIRC/840.

[914] *Ibid*., document INFCIRC/172/Add.3.

[915] *Ibid*., document INFCIRC/551/Add.1.

[916] *Ibid*., document INFCIRC/690/Add.1.

[917] *Ibid*., document INFCIRC/840/Add.1.

[918] *Ibid*., document INFCIRC/376/Add.1.

as of 31 December 2012. An Additional Protocol with Guinea-Bissau was approved by the IAEA Board of Governors in 2012.

15. Organisation for the Prohibition of Chemical Weapons (OPCW)[919]

(*a*) Membership

During 2012, the membership to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ("the Convention" or "CWC")[920] remained unchanged. As at the end of 2012, there were 188 States parties to the CWC.

(*b*) Legal status, privileges and immunities and international agreements

During 2012, the OPCW continued to negotiate bilateral privileges and immunities agreements with States parties pursuant to paragraph 50 of article VIII of the Convention. As a result, the Executive Council of the OPCW was able to conclude privileges and immunities agreements with four States parties, namely Lao People's Democratic Republic, Mozambique, Paraguay and Thailand. Moreover, the Executive Council approved one amendment to the existing agreement with Bulgaria. These five agreements were yet to enter into force. In addition, five other such agreements with States parties, namely, the Albania, Czech Republic, Estonia, Mauritius and Uruguay entered into force in 2012.

During 2012, the OPCW also concluded a number of international agreements, including, *inter alia*, agreements concerning the procurement of assistance, contribution agreements, exchange of letters, technical arrangements, facility agreements, and memoranda of understanding, that entail substantial undertakings at the policy level or that are intended to facilitate the day-to-day work of the Technical Secretariat in support of the objectives of the Convention. The Technical Secretariat registered 42 such international agreements in 2012 and three amendments to an international agreement already in force.

(*c*) OPCW legislative assistance activities

Throughout 2012, the Technical Secretariat of the OPCW continued to render assistance, upon request, to States parties that had yet to adopt legislative and other measures to implement their obligations under the Convention as well as to States parties wishing to update their legal framework. The OPCW continued to provide tailor made assistance on national implementation of the Convention to the requesting States parties, pursuant to subparagraph 38(e) of article VIII of the Convention, as well as to the decision on national implementation measures of article VII obligations adopted by the Conference of States Parties at its fourteenth session.[921]

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[919] For official documents and more information on the Organisation for the Prohibition of Chemical Weapons, see http://www.opcw.org.

[920] United Nations, *Treaty Series*, vol. 1974, p. 45.

[921] OPCW, document C-14/DEC.12, dated 4 December 2009.

In its implementation support efforts, the Technical Secretariat of the OPCW acted in accordance with the terms of subparagraph 38(e) of article VIII of the Convention and the provisions of the plan of action regarding the implementation of article VII obligations adopted by the Conference at its eighth session ("the Action Plan")[922] as well as other decisions regarding the implementation of article VII obligations.[923] These decisions focused on, *inter alia*, the obligations of States parties to designate or establish a National Authority to serve as national focal point for effective liaison with the OPCW and other States parties, as required by paragraph 4 of article VII of the Convention, and the steps necessary to enact national implementing legislation, including penal legislation and administrative measures to implement the Convention, as required by paragraph 1 of article VII of the Convention.

During 2012, the Technical Secretariat provided, upon request, six sets of comments on draft implementing legislation and one set of comments or guidance on measures at the regulatory level.

In the course of 2012, the number of National Authorities remained stable at 186. There remained only two States parties that had not yet fulfilled the requirement of article VII (4) of the CWC to designate or establish a national authority. Additionally, with regard to the adoption of the necessary legislative and/or administrative measures, 127 States parties (68 per cent) had submitted the full text of their implementing legislation. Furthermore, regarding legislation covering all key areas of the Action Plan, 91 States parties (48 per cent) had informed the Technical Secretariat of having adopted such legislative or administrative measures.

In addition to the assistance to individual States parties, a number of national, subregional, regional workshops, sensitization and awareness presentations and training courses were held for National Authorities, parliamentarians and other national stakeholders involved in the implementation of the Convention. Those events dealt, *inter alia*, with matters such as legislative and regulatory drafting.[924]

(*d*) Decisions adopted by the OPCW policy-making organs

(i) *Chemical weapons issues*

According to the provisions of the CWC, possessor States parties were required to destroy their chemical weapons within ten years after the Convention entered into force, i.e., by 29 April 2007, with the possibility of requesting an extension of this deadline by up to five years, i.e., up to 29 April 2012. As the final extended deadline of 29 April 2012 approached, the possessor States indicated that they might not meet this deadline. In order to address this situation prior to the expiration of the deadline, the Conference of the

[922] *Ibid*., document C-8/DEC.16, dated 24 October 2003.

[923] *Ibid*., documents C-10/DEC.16 dated 11 November 2005; C-1l/DEC.4 dated 6 December 2006; C-12/DEC.9 dated 9 November 2007 and C-13/DEC.7 dated 5 December 2008.

[924] For example: the Tenth Regional Meeting of National Authorities of States Parties in Africa to the CWC, Addis Ababa, Ethiopia, May 2012; the Thirteenth Regional Meeting of National Authorities in Latin America and the Caribbean of the CWC, San José, Costa Rica, June 2012; and the Tenth Regional Meeting of National Authority in Asia to the CWC , Colombo, Sri Lanka, June 2012.

States Parties, at its sixteenth session, adopted a decision on the final extended deadline of 29 April 2012[925] underlining that the destruction of chemical weapons should continue in accordance with the provisions of the Convention and its Verification Annex, and prescribing additional obligations, in particular, strengthening reporting obligations, on the possessor States in the event that they would not meet the final extended deadline. This decision became operational in 2012, after the Director-General notified the Executive Council on 1 May 2012 that the deadline of 29 April 2012 had not been met.

(ii) *Chemical weapons production facilities issues*

Paragraph 85 of part V of the Verification Annex to the Convention specifies that, upon completion of the ten year period after the Director-General certify that conversion of chemical weapons production facilities was complete, the Executive Council, taking into account recommendations of the Technical Secretariat, should decide on the nature of continued verification measures. The Executive Council, at its Sixty-Seventh Session, adopted a decision on the "Nature of Continued Verification Measures at the Converted Facilities Ten Years After the Director-General's Certification of Their Conversion".[926] This decision established the verification regime that would be applicable to chemical weapons production facilities that had been granted authorization by the Conference of the States Parties to be used for purposes not prohibited under the Convention, and for which the Director General had certified completion of conversion.

16. World Trade Organization[927]

(*a*) Membership

(i) *General*

Four new members formally joined the World Trade Organization (WTO) in 2012: Montenegro (29 April 2012); Samoa (10 May 2012); the Russian Federation (22 August 2012); and Vanuatu (24 August 2012). The WTO membership counted 157 members. Two Accession Working Parties concluded their mandate in 2012 (Lao People's Democratic Republic (Lao PDR) and Tajikistan.

Applications for WTO membership were examined in individual Accession Working Parties, established by the Ministerial Conference/General Council. The legal framework of WTO accessions is set out in article XII of the Marrakesh Agreement Establishing the World Trade Organization, 1994.[928] As a result of bilateral and multilateral negotiations with WTO members, acceding countries/separate customs territories undertook trade liberalizing commitments on market access; specific commitments on WTO rules; and agreed to comply with the WTO Agreement.

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[925] *Ibid*., document C-16/DEC.11, dated 1 December 2011.

[926] *Ibid*., document EC-67/DEC.7, dated 16 February 2012.

[927] For official documents and more information on the World Trade Organization, see http://www.wto.org.

[928] United Nations, *Treaty Series*, vol. 1867, p. 3.

Special Guidelines for Least-developed Countries' accessions were provided for by the General Council Decision of 10 December 2002.[929] Work on these 2002 Guidelines continued pursuant to the decision at the eighth WTO Ministerial Conference of 17 December 2011.[930] As a follow-up, the General Council adopted the decision of 25 July 2012 to strengthen, streamline and operationalize the 2002 Guidelines.[931] The 2012 General Council decision included provisions under the following pillars: (i) benchmarks on goods; (ii) benchmarks on services; (iii) transparency in accession negotiations; (iv) special and differential treatment and transition periods; and (v) technical assistance.

(ii) *Ongoing accessions in 2012*

In 2012, the following countries/separate customs territories were in the process of acceding to the WTO (in alphabetical order):

1. Afghanistan*
2. Algeria
3. Andorra
4. Azerbaijan
5. The Bahamas
6. Belarus
7. Bhutan*
8. Bosnia and Herzegovina
9. Comoros*
10. Equatorial Guinea*
11. Ethiopia*
12. Iran, Islamic Republic of
13. Iraq
14. Kazakhstan
15. Lao People's Democratic Republic* **
16. Lebanon
17. Liberia*
18. Libya
19. Sao Tomé and Principe*
20. Serbia
21. Seychelles
22. Sudan *
23. Syrian Arab Republic
24. Tajikistan**
25. Uzbekistan
26. Yemen*

* LDCs (10)

** The Accession Working Party had completed its mandate and the Accession Package had been approved by the General Council. The Acceding Government would become a member of the WTO thirty days after notifying the Secretariat of the domestic ratification of its Accession Package.

Of these 26 acceding countries or separate customs territories:

– Ninteen acceding countries had submitted a Memorandum on the Foreign Trade Regime—a key document containing the factual information needed for activating the work of the Working Party and establishing the specific (multilateral) commitments of the acceding countries or separate customs territories;

[929] WTO, document WT/L/508.

[930] *Ibid*., WT/L/846.

[931] *Ibid*., WT/L/508/Add.1.

- Eighteen Accession Working Parties had held their first meeting;
- Sixteen acceding countries had tabled their offers on goods and 15 had tabled their offer on services to initiate bilateral market access negotiations with interested members;
- Four Accession Working Parties were advancing on the basis of a Factual Summary of Points Raised;
- One Accession Working Party was advancing on the basis of an Elements of a Draft Working Party Report;
- Eight Accession Working Parties were advancing on the basis of a Draft Working Party Report; and
- Two Accession Working Parties had completed their mandates and the respective Accession Packages had been approved by the General Council (Lao PDR[932] and Tajikistan[933]). Those two acceding countries would become members of the WTO thirty days after notifying the Secretariat of the domestic ratification of their Accession Packages.

(*b*) Dispute settlement

The General Council convened as the Dispute Settlement Body (DSB) to deal with disputes arising under any agreement annexed to the Final Act of the Uruguay Round, namely, the Marrakesh Agreement Establishing the World Trade Organization; the multilateral trade agreements covering trade in goods, trade in services, and trade-related aspects of intellectual property rights; and the two plurilateral trade agreements covering trade in civil aircraft and Government procurement. The DSB has the sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorize suspension of concessions in the event of non-compliance with those recommendations and rulings.

During 2012, 27 requests for consultations (the first formal step in dispute settlement proceedings) were received pursuant to article 4 of the Dispute Settlement Understanding (DSU).[934] The DSB established 11 new panels to adjudicate 13 new cases (where more than one complaint is filed dealing with the same matter, such complaints are normally adjudicated by a single panel). The DSB established panels in the following cases:

- United States—Anti-Dumping Measures on Corrosion-Resistant Carbon Steel Flat Products from Korea (WT/DS420);
- China—Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union (WT/DS425);
- Canada—Measures Relating to the Feed-In Tariff Program (WT/DS426);
- China—Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States (WT/DS427);

[932] *Ibid*., WT/L/823.

[933] *Ibid*., WT/L/865.

[934] United Nations, *Treaty Series,* vol. 1869, p. 401.

- India—Measures Concerning the Importation of Certain Agricultural Products (WT/DS430);
- China—Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum (WT/DS431, WT/DS432, WT/DS433);
- Australia—Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging (WT/DS434);
- United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WT/DS436);
- United States—Countervailing Duty Measures on Certain Products from China (WT/DS437);
- China—Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States (WT/DS440); and
- United States—Countervailing and Anti-Dumping Measures on Certain Products from China (WT/DS449).

Appellate Body and Panel reports adopted by the DSB

The DSB adopted the following 11 Panel reports covering 18 disputes and seven Appellate Body reports covering 11 disputes during 2012:

- United States—Measures Affecting Trade in Large Civil Aircraft (Second Complaint) (WT/DS353) (Appellate Body and Panel Reports);
- United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (WT/DS381) (Appellate Body and Panel Reports);
- United States—Certain Country of Origin Labelling (COOL) Requirement (WT/DS384, WT/DS386) (Appellate Body and Panel reports);
- China—Measures Related to the Exportation of Various Raw Materials (WT/DS394, WT/DS395, WT/DS398) (Appellate Body and Panel reports);
- Philippines—Taxes on Distilled Spirits (WT/DS396, WT/DS403) (Appellate Body and Panel Reports);
- European Union—Anti-Dumping Measures on Certain Footwear from China (WT/DS405) (Panel Report);
- United States—Measures Affecting the Production and Sale of Clove Cigarettes (WT/DS406) (Appellate Body and Panel Reports);
- China—Measures Affecting Electronic Payment Services (WT/DS413) (Panel Report);
- China—Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States (WT/DS414) (Appellate Body and Panel Reports);
- Dominican Republic—Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric (WT/DS415, WT/DS416, WT/DS417, WT/DS418) (Panel Report); and
- United States—Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China (WT/DS422) (Panel Report).

(*c*) Waivers under article IX of the WTO Agreement

The General Council granted the following waivers from obligations under the WTO Agreements.

Waiver	Decision	Date of adoption of Decision	Granted until	Report in 2012[935]
Granted in 2012				
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions[936]	WT/L/873	11 December 2012	31 December 2013	–
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions[937]	WT/L/874	11 December 2012	31 December 2013	–
Introduction of Harmonized System 2012 Changes into WTO Schedules of Tariff Concessions[938]	WT/L/875	11 December 2012	31 December 2013	–
Kimberly Process Certification Scheme for Rough Diamonds—Extension of Waiver[939]	WT/L/876	11 December 2012	31 December 2018	–
Cuba—Article XV:6 – Extension of waiver	WT/L/850	14 February 2012	31 December 2016	WT/L/867
European Union—Preferences for Pakistan	WT/L/851	14 February 2012	31 December 2013	–
Previously granted – in force in 2012				
Preferential Treatment to Services and Service Suppliers of Least-Developed Countries	WT/L/847	17 December 2011	17 December 2026	–
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions[940]	WT/L/832	30 November 2011	31 December 2012	–
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions[941]	WT/L/833	30 November 2011	31 December 2012	–
Introduction of Harmonized System 2012 Changes into WTO Schedules of Tariff Concessions[942]	WT/L/834	30 November 2011	31 December 2012	–
CARIBCAN	WT/L/835	30 November 2011	31 December 2013	WT/L/868

Waiver	Decision	Date of adoption of Decision	Granted until	Report in 2012[935]
European Union—Application of Autonomous Preferential Treatment to the Western Balkans	WT/L/836	30 November 2011	31 December 2016	WT/L/870 and Corr. 1
Cape Verde—Implementation of Article VII of GATT 1994 and of the Agreement on Customs Valuation	WT/L/812	3 May 2011	1 January 2012	–
Preferential Tariff Treatment for Least-Developed Countries—Decision on Extension of waiver	WT/L/759	27 May 2009	30 June 2019	–
United States—Andean Trade Preference Act – Renewal of waiver	WT/L/755	27 May 2009	31 December 2014	WT/L/860
United States—African Growth and Opportunity Act	WT/L/754	27 May 2009	30 September 2015	WT/L/859
United States—Caribbean Basin Economic Recovery Act – Renewal of waiver	WT/L/753	27 May 2009	31 December 2014	WT/L/858
European Communities—Application of Autonomous Preferential Treatment to Moldova	WT/L/722	7 May 2008	31 December 2013	WT/L/861
Mongolia—Export duties on raw cashmere	WT/L/695	27 July 2007	29 January 2012	–
United States—Former Trust Territory of the Pacific Islands	WT/L/694	27 July 2007	31 December 2016	WT/L/857
Kimberley Process Certification Scheme for rough diamonds[943]	WT/L/676	15 December 2006	31 December 2012	–
Implementation of Para. 6 of the Doha Declaration on the TRIPS Agreement and Public Health	WT/L/540 and Corr.1	30 August 2003	See WT/L/540 and Corr.1	IP/C/63
Least-Developed Country Members—Obligations under Article 70.9 of the TRIPS Agreement with respect to Pharmaceutical Products	WT/L/478	8 July 2002	1 January 2016	–

[935] Applicable if so stipulated in the corresponding waiver Decision.

[936] The members which had requested to be covered under this waiver are: Argentina; Australia; Brazil; China; Croatia; European Union; Iceland; India; Malaysia; and Uruguay.

[937] The members which had requested to be covered under this waiver are: Argentina; Australia; Brazil; Canada; China; Costa Rica; Croatia; Dominican Republic; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Philippines; Republic of Korea; Singapore; Switzerland; Thailand; United States; and Uruguay.

[938] The members which had requested to be covered under this waiver are: Australia; Brazil; Canada; China; Costa Rica; Dominican Republic; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Macao, China; Malaysia; Mexico; New Zealand; Norway; Pakistan; Republic of Korea; Russian Federation; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and United States.

[939] Annex: Australia, Botswana, Brazil, Canada, Croatia, European Union, India, Israel, Japan, Mexico, New Zealand, Norway, Philippines, Republic of Korea, Russian Federation, Singapore, Chinese Taipei, Thailand, Turkey, United States, and Venezuela (Bolivarian Republic of).

[940] The members which had requested to be covered under this waiver are: Argentina; Australia; Brazil; China; Croatia; European Union; Iceland; India; Malaysia; Mexico; Thailand; and Uruguay.

[941] The members which had requested to be covered under this waiver are: Argentina; Australia; Brazil; Canada; China; Costa Rica; Croatia; Dominican Republic; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Philippines; Republic of Korea; Singapore; Switzerland; Thailand; United States; and Uruguay.

[942] The members which had requested to be covered under this waiver are: Australia; Brazil; Canada; China; Costa Rica; Dominican Republic; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Macao, China; Malaysia; Mexico; New Zealand; Norway; Pakistan; Republic of Korea; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and United States.

[943] Annex: Australia; Botswana; Brazil; Canada; Croatia; India; Israel; Japan; Korea; Mauritius; Mexico; Norway; Philippines; Sierra Leone; Chinese Taipei; Thailand; United Arab Emirates; United States; and Venezuela.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

In 2012, the following instruments were concluded under the auspices of the United Nations:

— Food Assistance Convention, London, 25 April 2012[1]

— Doha Amendment to the Kyoto Protocol, Doha, 8 December 2012.[2]

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. International Maritime Organization

In 2012, the International Maritime Organization (IMO) concluded the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.[3]

2. World Health Organization

Protocol to Eliminate Illicit Trade in Tobacco Products.
Seoul, 12 November 2012*

Preamble

The Parties to this Protocol,

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[1] Not reproduced herein. For the text of the Convention see, United Nations, *Treaty Series*, registration no. 50320.

[2] Not reproduced herein. For the text of the Amendment see, *Multilateral Treaties Deposited with the Secretary-General,* chapter XXVII.7.c.

[3] Not reproduced herein. The text of the Agreement can be found at http://www.imo.org/ (SFV-P/CONF.1/16).

* Adopted by the Conference of the Parties of the World Health Organization Framework Convention on Tobacco Control at its fifth session from 12 to 17 November 2012 (FCTC/COP5 (1)).

Considering that on 21 May 2003, the Fifty-sixth World Health Assembly adopted by consensus the WHO Framework Convention on Tobacco Control, which came into force on 27 February 2005;

Recognizing that the WHO Framework Convention on Tobacco Control is one of the United Nations' most rapidly ratified treaties and a fundamental tool for attaining the objectives of the World Health Organization;

Recalling the Preamble to the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health as a fundamental right of every human being without distinction of race, religion, political belief, economic or social condition;

Determined also to give priority to their right to protect public health;

Deeply concerned that the illicit trade in tobacco products is contributing to the spread of the tobacco epidemic, which is a global problem with serious consequences for public health that calls for effective, appropriate and comprehensive domestic and international responses;

Recognizing further that illicit trade in tobacco products undermines price and tax measures designed to strengthen tobacco control and thereby increases the accessibility and affordability of tobacco products;

Seriously concerned by the adverse effects that the increase in accessibility and affordability of illicitly traded tobacco products has on public health and the well-being, in particular of young people, the poor and other vulnerable groups;

Seriously concerned about the disproportionate economic and social implications of illicit trade in tobacco products on developing countries and countries with economies in transition;

Aware of the need to develop scientific, technical and institutional capacity to plan and implement appropriate national, regional and international measures to eliminate all forms of illicit trade in tobacco products;

Acknowledging that access to resources and relevant technologies is of great importance for enhancing the ability of Parties, particularly in developing countries and countries with economies in transition, to eliminate all forms of illicit trade in tobacco products;

Acknowledging also that, although free zones are established to facilitate legal trade, they have been used to facilitate the globalization of illicit trade in tobacco products, both in relation to the illicit transit of smuggled products and in the manufacture of illicit tobacco products;

Recognizing also that illicit trade in tobacco products undermines the economies of Parties and adversely affects their stability and security;

Also aware that illicit trade in tobacco products generates financial profits that are used to fund transnational criminal activity, which interferes with government objectives;

Recognizing that the illicit trade in tobacco products undermines health objectives, imposes additional strain on health systems and causes losses of revenue to the economies of the Parties;

Mindful of Article 5.3 of the WHO Framework Convention on Tobacco Control in which Parties agree that in setting and implementing their public health policies with

respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law;

Emphasizing the need to be alert to any efforts by the tobacco industry to undermine or subvert strategies to combat illicit trade in tobacco products and the need to be informed of activities of the tobacco industry that have a negative impact on strategies to combat illicit trade in tobacco products;

Mindful of Article 6.2 of the WHO Framework Convention on Tobacco Control, which encourages Parties to prohibit or restrict, as appropriate, sales to and/or importation by international travellers of tax- and duty-free tobacco products;

Recognizing in addition that tobacco and tobacco products in international transit and transhipment find a channel for illicit trade;

Taking into account that effective action to prevent and combat illicit trade in tobacco products requires a comprehensive international approach to, and close cooperation on, all aspects of illicit trade, including, as appropriate, illicit trade in tobacco, tobacco products and manufacturing equipment;

Recalling and emphasizing the importance of other relevant international agreements such as the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the obligation that Parties to these Conventions have to apply, as appropriate, the relevant provisions of these Conventions to illicit trade in tobacco, tobacco products and manufacturing equipment and *encouraging* those Parties that have not yet become Parties to these agreements to consider doing so;

Recognizing the need to build enhanced cooperation between the Convention Secretariat of the WHO Framework Convention on Tobacco Control and the United Nations Office on Drugs and Crime, the World Customs Organization and other bodies, as appropriate;

Recalling Article 15 of the WHO Framework Convention on Tobacco Control, in which Parties recognize, *inter alia*, that the elimination of all forms of illicit trade in tobacco products, including smuggling and illicit manufacturing, is an essential component of tobacco control;

Considering that this Protocol does not seek to address issues concerning intellectual property rights; and

Convinced that supplementing the WHO Framework Convention on Tobacco Control by a comprehensive protocol will be a powerful, effective means to counter illicit trade in tobacco products and its grave consequences,

Hereby agree as follows:

Part I: Introduction

Article 1. Use of terms

1. "Brokering" means acting as an agent for others, as in negotiating contracts, purchases, or sales in return for a fee or commission.

2. "Cigarette" means a roll of cut tobacco for smoking, enclosed in cigarette paper. This excludes specific regional products such as bidis, ang hoon, or other similar products which can be wrapped in paper or leaves. For the purpose of Article 8, "cigarette" also includes fine cut "roll your own" tobacco for the purposes of making a cigarette.

3. "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority.

4. "Controlled delivery" means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

5. "Free zone" means a part of the territory of a Party where any goods introduced are generally regarded, in so far as import duties and taxes are concerned, as being outside the Customs territory.

6. "Illicit trade" means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity.

7. "Licence" means permission from a competent authority following submission of the requisite application or other documentation to the competent authority.

8. (*a*) "Manufacturing equipment" means machinery which is designed, or adapted, to be used solely for the manufacture of tobacco products and is integral to the manufacturing process.[5]

(*b*) "Any part thereof" in the context of manufacturing equipment means any identifiable part which is unique to manufacturing equipment used in the manufacture of tobacco products.

9. "Party" means, unless the context indicates otherwise, a Party to this Protocol.

10. "Personal data" means any information relating to an identified or identifiable natural person.

11. "Regional economic integration organization" means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters.6

12. The "supply chain" covers the manufacture of tobacco products and manufacturing equipment; and import or export of tobacco products and manufacturing equipment; and may be extended, where relevant, to one or more of the following activities when so decided by a Party:

(*a*) retailing of tobacco products;

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[5] Parties may include reference to the Harmonized Commodity Description and Coding System of the World Customs Organization for this purpose, wherever applicable.

[6] Where appropriate, national or domestic will refer equally to regional economic integration organizations.

(*b*) growing of tobacco, except for traditional small-scale growers, farmers and producers;

(*c*) transporting commercial quantities of tobacco products or manufacturing equipment; and

(*d*) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.

13. "Tobacco products" means products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing.

14. "Tracking and tracing" means systematic monitoring and re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by items through the supply chain, as outlined in Article 8.

Article 2. Relationship between this Protocol and other agreements and legal instruments

1. The provisions of the WHO Framework Convention on Tobacco Control that apply to its protocols shall apply to this Protocol.

2. Parties that have entered into the types of agreements mentioned in Article 2 of the WHO Framework Convention on Tobacco Control shall communicate such agreements to the Meeting of the Parties through the Convention Secretariat.

3. Nothing in this Protocol shall affect the rights and obligations of any Party pursuant to any other international convention, treaty or international agreement in force for that Party that it deems to be more conducive to the achievement of the elimination of illicit trade in tobacco products.

4. Nothing in this Protocol shall affect other rights, obligations and responsibilities of Parties under international law, including the United Nations Convention against Transnational Organized Crime.

Article 3. Objective

The objective of this Protocol is to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO Framework Convention on Tobacco Control.

Part II: General obligations

Article 4. General obligations

1. In addition to the provisions of Article 5 of the WHO Framework Convention on Tobacco Control, Parties shall:

(*a*) adopt and implement effective measures to control or regulate the supply chain of goods covered by this Protocol in order to prevent, deter, detect, investigate and prosecute illicit trade in such goods and shall cooperate with one another to this end;

(*b*) take any necessary measures in accordance with their national law to increase the effectiveness of their competent authorities and services, including customs and police

responsible for preventing, deterring, detecting, investigating, prosecuting and eliminating all forms of illicit trade in goods covered by this Protocol;

(*c*) adopt effective measures for facilitating or obtaining technical assistance and financial support, capacity building and international cooperation in order to achieve the objectives of this Protocol and ensure the availability to, and secure exchange with, the competent authorities of information to be exchanged under this Protocol;

(*d*) cooperate closely with one another, consistent with their respective domestic legal and administrative systems, in order to enhance the effectiveness of law enforcement action to combat the unlawful conduct including criminal offences established in accordance with Article 14 of this Protocol;

(*e*) cooperate and communicate, as appropriate, with relevant regional and international intergovernmental organizations in the secure[7] exchange of information covered by this Protocol in order to promote the effective implementation of this Protocol; and

(*f*) within the means and resources at their disposal, cooperate to raise financial resources for the effective implementation of this Protocol through bilateral and multilateral funding mechanisms.

2. In implementing their obligations under this Protocol, Parties shall ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry.

Article 5. Protection of personal data

Parties shall protect personal data of individuals regardless of nationality or residence, subject to national law, taking into consideration international standards regarding the protection of personal data, when implementing this Protocol.

Part III: Supply chain control

Article 6. Licence, equivalent approval or control system

1. To achieve the objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each Party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter "licence") granted, or control system implemented, by a competent authority in accordance with national law:

(*a*) manufacture of tobacco products and manufacturing equipment; and

(*b*) import or export of tobacco products and manufacturing equipment.

2. Each Party shall endeavour to license, to the extent considered appropriate, and when the following activities are not prohibited by national law, any natural or legal person engaged in:

(*a*) retailing of tobacco products;

[7] A secure exchange of information between two parties is resistant to interception and tampering (falsification). In other words, the information exchanged between the two parties cannot be read or modified by a third party.

(*b*) growing of tobacco, except for traditional small-scale growers, farmers and producers;

(*c*) transporting commercial quantities of tobacco products or manufacturing equipment; and

(*d*) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.

3. With a view to ensuring an effective licensing system, each Party shall:

(*a*) establish or designate a competent authority or authorities to issue, renew, suspend, revoke and/or cancel licences, subject to the provisions of this Protocol, and in accordance with its national law, to conduct the activities specified in paragraph 1;

(*b*) require that each application for a licence contains all the requisite information about the applicant, which should include, where applicable:

(i) where the applicant is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and any other information to allow identification to take place;

(ii) when the applicant is a legal person, information regarding its identity, including full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and of any designated legal representatives, including any other information to allow identification to take place;

(iii) precise business location of the manufacturing unit(s), warehouse location and production capacity of the business run by the applicant;

(iv) details of the tobacco products and manufacturing equipment covered by the application, such as product description, name, registered trade mark if any, design, brand, model or make and serial number of the manufacturing equipment;

(v) description of where manufacturing equipment will be installed and used;

(vi) documentation or a declaration regarding any criminal records;

(vii) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details; and

(viii) a description of the intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand;

(*c*) monitor and collect, where applicable, any licence fees that may be levied and consider using them in effective administration and enforcement of the licensing system or for public health or any other related activity in accordance with national law;

(*d*) take appropriate measures to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;

(*e*) undertake measures such as periodic review, renewal, inspection or audit of licences where appropriate;

(*f*) establish, where appropriate, a time frame for expiration of licences and subsequent requisite reapplication or updating of application information;

(*g*) oblige any licensed natural or legal person to inform the competent authority in advance of any change of location of their business or any significant change in information relevant to the activities as licensed;

(*h*) oblige any licensed natural or legal person to inform the competent authority, for appropriate action, of any acquisition or disposal of manufacturing equipment; and

(*i*) ensure that the destruction of any such manufacturing equipment or any part thereof, shall take place under the supervision of the competent authority.

4. Each Party shall ensure that no licence shall be assigned and/or transferred without receipt from the proposed licensee of the appropriate information contained in paragraph 3, and without prior approval from the competent authority.

5. Five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain whether any key inputs exist that are essential to the manufacture of tobacco products, are identifiable and can be subject to an effective control mechanism. On the basis of such research, the Meeting of the Parties shall consider appropriate action.

Article 7. Due diligence

1. Each Party shall require, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment:

(*a*) conduct due diligence before the commencement of and during the course of, a business relationship;

(*b*) monitor the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale or use; and

(*c*) report to the competent authorities any evidence that the customer is engaged in activities in contravention of its obligations arising from this Protocol.

2. Due diligence pursuant to paragraph 1 shall, as appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, include, *inter alia*, requirements for customer identification, such as obtaining and updating information relating to the following:

(*a*) establishing that the natural or legal person holds a licence in accordance with Article 6;

(*b*) when the customer is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and verification of his or her official identification;

(*c*) when the customer is a legal person, information regarding its identity, including full name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate

affiliates, names of its directors and any designated legal representatives, including the representatives' names and verification of their official identification;

(*d*) a description of the intended use and intended market of sale of tobacco, tobacco products or manufacturing equipment; and

(*e*) a description of the location where manufacturing equipment will be installed and used.

3. Due diligence pursuant to paragraph 1 may include requirements for customer identification, such as obtaining and updating information relating to the following:

(*a*) documentation or a declaration regarding any criminal records; and

(*b*) identification of the bank accounts intended to be used in transactions.

4. Each Party shall, on the basis of the information reported in paragraph 1(*c*), take all necessary measures to ensure compliance with the obligations arising from this Protocol, which may include the designation of a customer within the jurisdiction of the Party to become a blocked customer as defined by national law.

Article 8. Tracking and tracing

1. For the purposes of further securing the supply chain and to assist in the investigation of illicit trade in tobacco products, the Parties agree to establish within five years of entry into force of this Protocol a global tracking and tracing regime, comprising national and/or regional tracking and tracing systems and a global information-sharing focal point located at the Convention Secretariat of the WHO Framework Convention on Tobacco Control and accessible to all Parties, enabling Parties to make enquiries and receive relevant information.

2. Each Party shall establish, in accordance with this Article, a tracking and tracing system, controlled by the Party for all tobacco products that are manufactured in or imported onto its territory taking into account their own national or regional specific needs and available best practice.

3. With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party.

4.1 Each Party shall, for purposes of paragraph 3, as part of the global tracking and tracing regime, require that the following information be available, either directly or accessible by means of a link, to assist Parties in determining the origin of tobacco products, the point of diversion where applicable, and to monitor and control the movement of tobacco products and their legal status:

(*a*) date and location of manufacture;

(*b*) manufacturing facility;

(*c*) machine used to manufacture tobacco products;

(*d*) production shift or time of manufacture;

(*e*) the name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer;

(*f*) the intended market of retail sale;

(*g*) product description;

(*h*) any warehousing and shipping;

(*i*) the identity of any known subsequent purchaser; and

(*j*) the intended shipment route, the shipment date, shipment destination, point of departure and consignee.

4.2 The information in subparagraphs (*a*), (*b*), (*g*) and where available (*f*), shall form part of the unique identification markings.

4.3 Where the information in subparagraph (*f*) is not available at the time of marking, Parties shall require the inclusion of such information in accordance with Article 15.2(a) of the WHO Framework Convention on Tobacco Control.

5. Each Party shall require, within the time limits specified in this Article, that the information set out in paragraph 4 is recorded, at the time of production, or at the time of first shipment by any manufacturer or at the time of import onto its territory.

6. Each Party shall ensure that the information recorded under paragraph 5 is accessible by that Party by means of a link with the unique identification markings required under paragraphs 3 and 4.

7. Each Party shall ensure that the information recorded in accordance with paragraph 5, as well as the unique identification markings rendering such information accessible in accordance with paragraph 6 shall be included in a format established or authorized by the Party and its competent authorities.

8. Each Party shall ensure that the information recorded under paragraph 5 is accessible to the global information-sharing focal point on request, subject to paragraph 9, through a standard electronic secure interface with its national and/or regional central point. The global information-sharing focal point shall compile a list of the competent authorities of Parties and make the list available to all Parties.

9. Each Party or the competent authority shall:

(*a*) have access to the information outlined in paragraph 4 in a timely manner by making a query to the global information-sharing focal point;

(*b*) request such information only where it is necessary for the purpose of detection or investigation of illicit trade in tobacco products;

(*c*) not unreasonably withhold information;

(*d*) answer the information requests in relation to paragraph 4, in accordance with its national law; and

(*e*) protect and treat as confidential, as mutually agreed, any information that is exchanged.

10. Each Party shall require the further development and expansion of the scope of the applicable tracking and tracing system up to the point that all duties, relevant taxes, and where appropriate, other obligations have been discharged at the point of manufacture, import or release from customs or excise control.

11. Parties shall cooperate with each other and with competent international organizations, as mutually agreed, in sharing and developing best practices for tracking and tracing systems including:

(*a*) facilitation of the development, transfer and acquisition of improved tracking and tracing technology, including knowledge, skills, capacity and expertise;

(*b*) support for training and capacity-building programmes for Parties that express such a need; and

(*c*) further development of the technology to mark and scan unit packets and packages of tobacco products to make accessible the information listed in paragraph 4.

12. Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry.

13. Each Party shall ensure that its competent authorities, in participating in the tracking and tracing regime, interact with the tobacco industry and those representing the interests of the tobacco industry only to the extent strictly necessary in the implementation of this Article.

14. Each Party may require the tobacco industry to bear any costs associated with that Party's obligations under this Article.

Article 9. Record-keeping

1. Each Party shall require, as appropriate, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment maintain complete and accurate records of all relevant transactions. Such records must allow for the full accountability of materials used in the production of their tobacco products.

2. Each Party shall, as appropriate, require persons licensed in accordance with Article 6 to provide, on request, the following information to the competent authorities:

(*a*) general information on market volumes, trends, forecasts and other relevant information; and

(*b*) the quantities of tobacco products and manufacturing equipment in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transhipment or duty suspension as of the date of the request.

3. With respect to tobacco products and manufacturing equipment sold or manufactured on the territory of the Party for export, or subject to duty-suspended movement in transit or transhipment on the territory of the Party, each Party shall, as appropriate, require that persons licensed in accordance with Article 6, provide, on request, to the competent authorities in the country of departure (electronically, where the infrastructure exists) at the time of departure from their control with the following information:

(*a*) the date of shipment from the last point of physical control of the products;

(*b*) the details concerning the products shipped (including brand, amount, warehouse);

(*c*) the intended shipping routes and destination;

(*d*) the identity of the natural or legal person(*s*) to whom the products are being shipped;

(*e*) the mode of transportation, including the identity of the transporter;

(*f*) the expected date of arrival of the shipment at the intended shipping destination; and

(g) intended market of retail sale or use.

4. If feasible, each Party shall require that retailers and tobacco growers, except for traditional growers working on a non-commercial basis, maintain complete and accurate records of all relevant transactions in which they engage, in accordance with its national law.

5. For the purposes of implementing paragraph 1, each Party shall adopt effective legislative, executive, administrative or other measures to require that all records are:

(*a*) maintained for a period of at least four years;

(*b*) made available to the competent authorities; and

(*c*) maintained in a format, as required by the competent authorities.

6. Each Party shall, as appropriate and subject to national law, establish a system for sharing details contained in all records kept in accordance with this Article with other Parties.

7. Parties shall endeavour to cooperate, with each other and with competent international organizations, in progressively sharing and developing improved systems for record-keeping.

Article 10. Security and preventive measures

1. Each Party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that all natural and legal persons subject to Article 6 take the necessary measures to prevent the diversion of tobacco products into illicit trade channels, including, *inter alia*:

(*a*) reporting to the competent authorities:

(i) the cross-border transfer of cash in amounts stipulated in national law or of cross-border payments in kind; and

(ii) all "suspicious transactions"; and

(*b*) supplying tobacco products or manufacturing equipment only in amounts commensurate with the demand for such products within the intended market of retail sale or use.

2. Each Party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that payments for transactions carried out by natural or legal persons subject to Article 6 be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.

3. A Party may require that payments carried out by natural or legal persons subject to Article 6 for materials used for the manufacture of tobacco products in its jurisdiction be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.

4. Each Party shall ensure that any contravention of the requirements of this Article is subject to appropriate criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions including, as appropriate, suspension or cancellation of a licence.

Article 11. Sale by internet, telecommunication or any other evolving technology

1. Each Party shall require that all legal and natural persons engaged in any transaction with regard to tobacco products through Internet-, telecommunication- or any other evolving technology-based modes of sale comply with all relevant obligations covered by this Protocol.

2. Each Party shall consider banning retail sales of tobacco products through Internet-, telecommunication- or any other evolving technology-based modes of sale.

Article 12. Free zones and international transit

1. Each Party shall, within three years of the entry into force of this Protocol for that Party, implement effective controls on all manufacturing of, and transactions in, tobacco and tobacco products, in free zones, by use of all relevant measures as provided in this Protocol.

2. In addition, the intermingling of tobacco products with non-tobacco products in a single container or any other such similar transportation unit at the time of removal from free zones shall be prohibited.

3. Each Party shall, in accordance with national law, adopt and apply control and verification measures to the international transit or transhipment, within its territory, of tobacco products and manufacturing equipment in conformity with the provisions of this Protocol in order to prevent illicit trade in such products.

Article 13. Duty free sales

1. Each Party shall implement effective measures to subject any duty free sales to all relevant provisions of this Protocol, taking into consideration Article 6 of the WHO Framework Convention on Tobacco Control.

2. No later than five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain the extent of illicit trade in tobacco products related to duty free sales of such products. On the basis of such research, the Meeting of the Parties shall consider appropriate further action.

PART IV: OFFENCES

Article 14. Unlawful conduct including criminal offences

1. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures as may be necessary to establish all of the following conduct as unlawful under its domestic law:

(*a*) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment contrary to the provisions of this Protocol;

(*b*) (i) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels;

(ii) any other acts of smuggling or attempted smuggling of tobacco, tobacco products or manufacturing equipment not covered by paragraph (*b*)(i);

(*c*) (i) any other form of illicit manufacture of tobacco, tobacco products or manufacturing equipment, or tobacco packaging bearing false fiscal stamps, unique identification markings, or any other required markings or labels;

(ii) wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting of illicitly manufactured tobacco, illicit tobacco products, products bearing false fiscal stamps and/or other required markings or labels, or illicit manufacturing equipment;

(*d*) mixing of tobacco products with non-tobacco products during progression through the supply chain, for the purpose of concealing or disguising tobacco products;

(*e*) intermingling of tobacco products with non-tobacco products in contravention of Article 12.2 of this Protocol;

(*f*) using Internet-, telecommunication- or any other evolving technology-based modes of sale of tobacco products in contravention of this Protocol;

(*g*) obtaining, by a person licensed in accordance with Article 6, tobacco, tobacco products or manufacturing equipment from a person who should be, but is not, licensed in accordance with Article 6;

(*h*) obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;

(*i*) (i) making any material statement that is false, misleading or incomplete, or failing to provide any required information to any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment and when not contrary to the right against self incrimination;

(ii) misdeclaring on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment or any other information specified in the protocol to:

(a) evade the payment of applicable duties, taxes and other levies, or

(b) prejudice any control measures for the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;

(iii) failing to create or maintain records covered by this Protocol or maintaining false records; and

(*j*) laundering of proceeds of unlawful conduct established as a criminal offence under paragraph 2.

2. Each Party shall, subject to the basic principles of its domestic law, determine which of the unlawful conduct set out in paragraph 1 or any other conduct related to illicit trade in tobacco, tobacco products and manufacturing equipment contrary to the provisions of this Protocol shall be criminal offences and adopt legislative and other measures as may be necessary to give effect to such determination.

3. Each Party shall notify the Secretariat of this Protocol which of the unlawful conduct set out in paragraphs 1 and 2 that Party has determined to be a criminal offence in accordance with paragraph 2, and shall furnish to the Secretariat copies of its laws, or a description thereof, that give effect to paragraph 2, and of any subsequent changes to such laws.

4. In order to enhance international cooperation in combatting the criminal offences related to illicit trade in tobacco, tobacco products and manufacturing equipment, Parties are encouraged to review their national laws regarding money laundering, mutual legal assistance and extradition, having regard to relevant international conventions to which they are Parties, to ensure that they are effective in the enforcement of the provisions of this Protocol.

Article 15. Liability of legal persons

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the unlawful conduct including criminal offences established in accordance with Article 14 of this Protocol.

2. Subject to the legal principles of each Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the liability of the natural persons who have engaged in the unlawful conduct or committed the criminal offences established in accordance with national laws and regulations and Article 14 of this Protocol.

Article 16. Prosecutions and sanctions

1. Each Party shall adopt such measures as may be necessary, in accordance with national law, to ensure that natural and legal persons held liable for the unlawful conduct including criminal offences established in accordance with Article 14 are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

2. Each Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for the unlawful conduct, including criminal offences established in accordance with Article 14, are exercised to maximize the effectiveness of law enforcement measures in respect of such unlawful conduct including criminal offences, and with due regard to the need to deter the commission of such unlawful conduct including offences.

3. Nothing contained in this Protocol shall affect the principle that the description of the unlawful conduct including criminal offences established in accordance with this Protocol and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a Party and that such unlawful conduct including criminal offences shall be prosecuted and sanctioned in accordance with that law.

Article 17. Seizure payments

Parties should, in accordance with their domestic law, consider adopting such legislative and other measures as may be necessary to authorize competent authorities to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products and/or manufacturing equipment.

Article 18. Disposal or destruction

All confiscated tobacco, tobacco products and manufacturing equipment shall be destroyed, using environmentally friendly methods to the greatest extent possible, or disposed of in accordance with national law.

Article 19. Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems it appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities on its territory for the purpose of effectively combating illicit trade in tobacco, tobacco products or manufacturing equipment.

2. For the purpose of investigating the criminal offences established in accordance with Article 14, Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using the techniques referred to in paragraph 1 in the context of cooperation at the international level.

3. In the absence of an agreement or arrangement as set forth in paragraph 2, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

4. Parties recognize the importance of, and need for, international cooperation and assistance in this area and shall cooperate, with each other and with international organizations, in developing capacity to achieve the goals of this Article.

Part V: International cooperation

Article 20. General information sharing

1. Parties shall, for the purpose of achieving the objectives of this Protocol, report, as part of the WHO Framework Convention on Tobacco Control reporting instrument relevant information, subject to domestic law, and where appropriate, inter alia, on matters such as:

(*a*) in aggregate form, details of seizures of tobacco, tobacco products or manufacturing equipment, quantity, value of seizures, product descriptions, dates and places of manufacture; and taxes evaded;

(*b*) import, export, transit, tax-paid and duty-free sales and quantity or value of production of tobacco, tobacco products or manufacturing equipment;

(*c*) trends, concealment methods and modi operandi used in illicit trade in tobacco, tobacco products or manufacturing equipment; and

(*d*) any other relevant information, as agreed by the Parties.

2. Parties shall cooperate with each other and with competent international organizations to build the capacity of Parties to collect and exchange information.

3. Parties shall deem the said information to be confidential and for the use of Parties only, unless otherwise stated by the transmitting Party.

Article 21. Enforcement information sharing

1. Parties shall, subject to domestic law or any applicable international treaties, where appropriate, exchange, on their own initiative or on the request of a Party that provides due justification that such information is necessary for the purpose of detection or investigation of illicit trade in tobacco, tobacco products or manufacturing equipment, the following information:

(*a*) records of licensing for the natural and legal persons concerned;

(*b*) information for identification, monitoring and prosecution of natural or legal persons involved in illicit trade in tobacco, tobacco products or manufacturing equipment;

(*c*) records of investigations and prosecutions;

(*d*) records of payment for import, export or duty-free sales of tobacco, tobacco products or manufacturing equipment; and

(*e*) details of seizures of tobacco, tobacco products or manufacturing equipment (including case reference information where appropriate, quantity, value of seizure, product description, entities involved, date and place of manufacture) and modi operandi (including means of transport, concealment, routing and detection).

2. Information received from Parties under this Article shall be used exclusively to meet the objectives of this Protocol. Parties may specify that such information may not be passed on without the agreement of the Party which provided the information.

Article 22. Information sharing: confidentiality and protection of information

1. Each Party shall designate the competent national authorities to which data referred to in Articles 20, 21 and 24 are supplied and notify Parties of such designation through the Convention Secretariat.

2. The exchange of information under this Protocol shall be subject to domestic law regarding confidentiality and privacy. Parties shall protect, as mutually agreed, any confidential information that is exchanged.

Article 23. Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters

1. Parties shall cooperate, with each other and/or through competent international and regional organizations in providing training, technical assistance and cooperation in scientific, technical and technological matters, in order to achieve the objectives of this Protocol, as mutually agreed. Such assistance may include the transfer of expertise or appropriate technology in the areas of information gathering, law enforcement, tracking and tracing, information management, protection of personal data, interdiction, electronic surveillance, forensic analysis, mutual legal assistance and extradition.

2. Parties may, as appropriate, enter into bilateral, multilateral or any other agreements or arrangements in order to promote training, technical assistance and cooperation in scientific, technical and technological matters taking into account the needs of developing-country Parties and Parties with economies in transition.

3. Parties shall cooperate, as appropriate, to develop and research the possibilities of identifying the exact geographical origin of seized tobacco and tobacco products.

Article 24. Assistance and cooperation: investigation and prosecution of offences

1. Parties shall, in accordance with their domestic law, take all necessary measures, where appropriate, to strengthen cooperation by multilateral, regional or bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of natural or legal persons engaged in illicit trade in tobacco, tobacco products or manufacturing equipment.

2. Each Party shall ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating illicit trade in tobacco, tobacco products or manufacturing equipment (including, where permitted under domestic law, judicial authorities) cooperate and exchange relevant information at national and international levels within the conditions prescribed by its domestic law.

Article 25. Protection of sovereignty

1. Parties shall carry out their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Protocol entitles a Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 26. Jurisdiction

1. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when:

(*a*) the offence is committed in the territory of that Party; or

(*b*) the offence is committed on board a vessel that is flying the flag of that Party or an aircraft that is registered under the laws of that Party at the time that the offence is committed.

2. Subject to Article 25, a Party may also establish its jurisdiction over any such criminal offence when:

(*a*) the offence is committed against that Party;

(*b*) the offence is committed by a national of that Party or a stateless person who has his or her habitual residence on its territory; or

(*c*) the offence is one of those established in accordance with Article 14 and is committed outside its territory with a view to the commission of an offence established in accordance with Article 14 within its territory.

3. For the purposes of Article 30, each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when the alleged offender is present on its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each Party may also adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when the alleged offender is present on its territory and it does not extradite him or her.

5. If a Party exercising its jurisdiction under paragraph 1 or 2 has been notified, or has otherwise learnt, that one or more other Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Protocol does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

Article 27. Law enforcement cooperation

1. Each Party shall adopt, consistent with their respective domestic legal and administrative systems, effective measures to:

(*a*) enhance and, where necessary, establish channels of communication between the competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the criminal offences established in accordance with Article 14;

(*b*) ensure effective cooperation among the competent authorities, agencies, customs, police and other law enforcement agencies;

(*c*) cooperate with other Parties in conducting enquiries in specific cases with respect to criminal offences established in accordance with Article 14 concerning:

(i) the identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) the movement of proceeds of crime or property derived from the commission of such offences; and

(iii) the movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(*d*) provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(*e*) facilitate effective coordination among its competent authorities, agencies and services and promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the Parties concerned, the posting of liaison officers;

(*f*) exchange relevant information with other Parties on specific means and methods used by natural or legal persons in committing such offences, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities; and

(*g*) exchange relevant information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the criminal offences established in accordance with Article 14.

2. With a view to giving effect to this Protocol, Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them accordingly. In the absence of such agreements or arrangements between the Parties concerned, the Parties may consider this Protocol as the basis for mutual law enforcement cooperation in respect of the offences covered by this Protocol. Whenever appropriate, Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. Parties shall endeavour to cooperate within their means to respond to transnational illicit trade of tobacco products committed through the use of modern technology.

Article 28. Mutual administrative assistance

Consistent with their respective domestic legal and administrative systems, Parties shall provide each other, either on request or on their own initiative, with information to ensure proper application of customs and other relevant law in the prevention, detection, investigation, prosecution and combating of illicit trade in tobacco, tobacco products or manufacturing equipment. The Parties shall deem the said information to be confidential and for restricted use, unless otherwise stated by the transmitting Party. Such information may include:

(*a*) new customs and other enforcement techniques of demonstrated effectiveness;

(*b*) new trends, means or methods of engaging in illicit trade in tobacco, tobacco products and manufacturing equipment;

(*c*) goods known to be the subject of illicit trade in tobacco, tobacco products and manufacturing equipment as well as details of description, packaging, transport and storage and methods used in respect of those goods;

(*d*) natural or legal persons known to have committed or to be a party to an offence established in accordance with Article 14; and

(*e*) any other data that would assist designated agencies in risk assessment for control and other enforcement purposes.

Article 29. Mutual legal assistance

1. Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with Article 14 of this Protocol.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which legal persons may be held liable in accordance with Article 15 of this Protocol in the requesting Party.

3. Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes:

(*a*) taking evidence or statements from persons;

(*b*) effecting service of judicial documents;

(*c*) executing searches and seizures, and freezing;

(*d*) examining objects and sites;

(*e*) providing information, evidentiary items and expert evaluations;

(*f*) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(*g*) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(*h*) facilitating the voluntary appearance of persons in the requesting Party; and

(*i*) any other type of assistance that is not contrary to the domestic law of the requested Party.

4. This Article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance.

5. Paragraphs 6 to 24 shall, on the basis of reciprocity, apply to requests made pursuant to this Article if the Parties in question are not bound by a treaty or intergovernmental agreement of mutual legal assistance. If the Parties are bound by such a treaty or intergovernmental agreement, the corresponding provisions of that treaty or intergovernmental agreement shall apply unless the Parties agree to apply paragraphs 6 to 24 in lieu thereof. Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

6. Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to their respective competent authorities for execution. When a Party has a special region or territory with a separate system of mutual legal assistance, it may des-

ignate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. Each Party shall notify the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol of the central authority designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the central authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through appropriate international organizations, if possible.

7. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested Party under conditions allowing the Party to establish authenticity. The language or languages acceptable to each Party shall be notified to the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

8. A request for mutual legal assistance shall contain:

(*a*) the identity of the authority making the request;

(*b*) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or judicial proceeding;

(*c*) a summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

(*d*) a description of the assistance sought and details of any particular procedure that the requesting Party wishes to be followed;

(*e*) where possible, the identity, location and nationality of any person concerned;

(*f*) the purpose for which the evidence, information or action is sought; and

(*g*) the provisions of the domestic law relevant to the criminal offence and the punishment therefore.

9. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

10. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

11. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall prevent the requesting Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting

Party shall notify the requested Party prior to the disclosure and, if so requested, consult with the requested Party. If, in an exceptional case, advance notice is not possible, the requesting Party shall inform the requested Party of the disclosure without delay.

12. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

13. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a Party and has to be heard as a witness or expert by the judicial authorities of another Party, the first Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting Party. Parties may agree that the hearing shall be conducted by a judicial authority of the requesting Party and attended by a judicial authority of the requested Party.

14. Mutual legal assistance may be refused:

(*a*) if the request is not made in conformity with this Article;

(*b*) if the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(*c*) if the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(*d*) where the request involves a crime where the maximum penalty in the requested Party is less than two years of imprisonment or other forms of deprivation of liberty or, if, in the judgment of the requested Party, the provision of the assistance would impose a burden on its resources that is disproportionate to the seriousness of the crime; or

(*e*) if it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

15. Reasons shall be given for any refusal of mutual legal assistance.

16. A Party shall not decline to render mutual legal assistance under this Article on the ground of bank secrecy.

17. Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

18. Parties may decline to render mutual legal assistance pursuant to this Article on the ground of absence of dual criminality. However, the requested Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested Party.

19. The requested Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting Party and for which reasons are given, preferably in the request. The requested Party shall respond to reasonable requests by the requesting Party regarding progress in its handling of the request. The requesting Party shall promptly inform the requested Party when the assistance sought is no longer required.

20. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

21. Before refusing a request pursuant to paragraph 14 or postponing its execution pursuant to paragraph 20, the requested Party shall consult with the requesting Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.

22. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

23. In the event of a request, the requested Party:

(*a*) shall provide to the requesting Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; and

(*b*) may, at its discretion, provide to the requesting Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

24. Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this Article.

Article 30. Extradition

1. This Article shall apply to the criminal offences established in accordance with Article 14 of this Protocol when:

(*a*) the person who is the subject of the request for extradition is located in the territory of the requested Party;

(*b*) the criminal offence for which extradition is sought is punishable under the domestic law of both the requesting Party and the requested Party; and

(*c*) the offence is punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least four years or by a more severe penalty or such lesser period as agreed by the Parties concerned pursuant to bilateral and multilateral treaties or other international agreements.

2. Each of the criminal offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Protocol as the legal basis for extradition in respect of any criminal offence to which this Article applies.

4. Parties that do not make extradition conditional on the existence of a treaty shall recognize the criminal offences to which this Article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the domestic law of the requested Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition.

6. Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any criminal offences to which this Article applies.

7. A Party in whose territory an alleged offender is present, if it does not extradite such person in respect of a criminal offence to which this Article applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a similar nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

8. Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that Party and the Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 7.

9. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

10. Any person regarding whom proceedings are being carried out in connection with any of the criminal offences to which this Article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the Party in the territory of which that person is present.

11. Nothing in this Protocol shall be interpreted as imposing an obligation to extradite if the requested Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

12. Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

13. Before refusing extradition, the requested Party shall, where appropriate, consult with the requesting Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

14. Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. Where Parties are bound by an existing treaty or intergovernmental arrangement the corresponding provisions of that treaty or intergovernmental arrangement shall apply unless the Parties agree to apply paragraph 1 to 13 in lieu thereof.

Article 31. Measures to ensure extradition

1. Subject to its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law, as appropriate and without delay, to the requesting Party.

3. Any person regarding whom the measures in accordance with paragraph 1 are being taken, shall be entitled to:

(*a*) communicate without delay with the nearest appropriate representative of the State of which that person is a national or, if that person is a stateless person, the State in the territory of which that person habitually resides; and

(*b*) be visited by a representative of that State.

PART VI: REPORTING

Article 32. Reporting and exchange of information

1. Each Party shall submit to the Meeting of the Parties, through the Convention Secretariat, periodic reports on its implementation of this Protocol.

2. The format and content of such reports shall be determined by the Meeting of the Parties. These reports shall form part of the regular WHO Framework Convention on Tobacco Control reporting instrument.

3. The content of the periodic reports referred to in paragraph 1, shall be determined having regard, inter alia, to the following:

(*a*) information on legislative, executive, administrative or other measures taken to implement this Protocol;

(*b*) information, as appropriate, on any constraints or barriers encountered in the implementation of this Protocol and on the measures taken to overcome those barriers;

(*c*) information, as appropriate, on financial and technical assistance provided, received, or requested for activities related to the elimination of illicit trade in tobacco products; and

(*d*) the information specified in Article 20.

In those cases when relevant data are already being collected as part of the Conference of the Parties reporting mechanism, the Meeting of the Parties shall not duplicate these efforts.

4. The Meeting of the Parties, pursuant to Articles 33 and 36, shall consider arrangements to assist developing-country Parties and Parties with economies in transition, at their request, in meeting their obligations under this Article.

5. The reporting of information under those Articles shall be subject to national law regarding confidentiality and privacy. Parties shall protect, as mutually agreed, any confidential information that is reported or exchanged.

Part VII: Institutional arrangements and financial resources

Article 33. Meeting of the parties

1. A Meeting of the Parties is hereby established. The first session of the Meeting of the Parties shall be convened by the Convention Secretariat immediately before or immediately after the next regular session of the Conference of the Parties following the entry into force of this Protocol.

2. Thereafter, regular sessions of the Meeting of the Parties shall be convened by the Convention Secretariat, immediately before or immediately after regular sessions of the Conference of the Parties.

3. Extraordinary sessions of the Meeting of the Parties shall be held at such other times as may be deemed necessary by the Meeting or at the written request of any Party, provided that, within six months of the request being communicated to them by the Convention Secretariat, it is supported by at least one third of the Parties.

4. The Rules of Procedure and the Financial Rules of the Conference of the Parties to the WHO Framework Convention on Tobacco Control shall apply, *mutatis mutandis*, to the Meeting of the Parties unless the Meeting of the Parties decides otherwise.

5. The Meeting of the Parties shall keep under regular review the implementation of the Protocol and take the decisions necessary to promote its effective implementation.

6. The Meeting of the Parties shall decide on the scale and mechanism of the voluntary assessed contributions from the Parties to the Protocol for the operation of this Protocol as well as other possible resources for its implementation.

7. At each ordinary session, the Meeting of the Parties shall by consensus adopt a budget and workplan for the financial period until the next ordinary session, which shall be distinct from the WHO Framework Convention on Tobacco Control budget and workplan.

Article 34. Secretariat

1. The Convention Secretariat shall be the Secretariat of this Protocol.

2. The functions of the Convention Secretariat with regard to its role as the secretariat of this Protocol shall be to:

(*a*) make arrangements for sessions of the Meeting of the Parties and any subsidiary bodies as well as working groups and other bodies established by the Meeting of the Parties and provide them with services as required;

(*b*) receive, analyse, transmit and provide feedback to Parties concerned as needed and to the Meeting of the Parties on reports received by it pursuant to this Protocol and facilitate the exchange of information among Parties;

(*c*) provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation, communication, and exchange of information required in accordance with the provisions of this Protocol, and assistance in the identification of available resources to facilitate implementation of the obligations under this Protocol;

(d) prepare reports on its activities under this Protocol under the guidance of and for submission to the Meeting of the Parties;

(e) ensure, under the guidance of the Meeting of the Parties, the necessary coordination with the competent international and regional intergovernmental organizations and other bodies;

(f) enter, under the guidance of the Meeting of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions as secretariat to this Protocol;

(g) receive and review applications by intergovernmental and nongovernmental organizations wishing to be accredited as observers to the Meeting of the Parties, while ensuring that they are not affiliated with the tobacco industry, and present the reviewed applications to the Meeting of the Parties for its consideration; and

(*h*) perform other secretariat functions specified by this Protocol and such other functions as may be determined by the Meeting of the Parties.

Article 35. Relations between the meeting of the parties and intergovernmental organizations

In order to provide technical and financial cooperation for achieving the objective of this Protocol, the Meetings of the Parties may request the cooperation of competent international and regional intergovernmental organizations, including financial and development institutions.

Article 36. Financial resources

1. Parties recognize the important role that financial resources play in achieving the objective of this Protocol, and acknowledge the importance of Article 26 of the WHO Framework Convention on Tobacco Control in achieving the objectives of the Convention.

2. Each Party shall provide financial support in respect of its national activities intended to achieve the objective of this Protocol, in accordance with its national plans, priorities and programmes.

3. Parties shall promote, as appropriate, the utilization of bilateral, regional, subregional and other multilateral channels to provide funding for strengthening the capacity of developing-country Parties and Parties with economies in transition in order to meet the objectives of this Protocol.

4. Without prejudice to Article 18, Parties are encouraged, subject to national laws and policies and where appropriate, to use any confiscated proceeds of crime deriving from

the illicit trade in tobacco, tobacco products and manufacturing equipment to achieve the objectives set out in this Protocol.

5. Parties represented in relevant regional and international intergovernmental organizations and financial and development institutions shall encourage these entities to provide financial assistance for developing-country Parties and for Parties with economies in transition to assist them in meeting their obligations under this Protocol, without limiting the rights of participation within these organizations.

6. Parties agree that:

(*a*) to assist Parties in meeting their obligations under this Protocol, all relevant potential and existing resources available for activities related to the objective of this Protocol should be mobilized and utilized for the benefit of all Parties, especially developing-country Parties and Parties with economies in transition; and

(*b*) the Convention Secretariat shall advise developing-country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate implementation of their obligations under this Protocol.

7. Parties may require the tobacco industry to bear any costs associated with a Party's obligations to achieve the objectives of this Protocol, in compliance with Article 5.3 of the WHO Framework Convention on Tobacco Control.

8. Parties shall endeavour, subject to their domestic law, to achieve self-financing of the implementation of the Protocol including through the levying of taxes and other forms of charges on tobacco products.

Part VIII: Settlement of disputes

Article 37. Settlement of disputes

The settlement of disputes between Parties concerning the interpretation or application of this Protocol is governed by Article 27 of the WHO Framework Convention on Tobacco Control.

Part IX: Development of the Protocol

Article 38. Amendments to this Protocol

1. Any Party may propose amendments to this Protocol.

2. Amendments to this Protocol shall be considered and adopted by the Meeting of the Parties. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the Convention Secretariat at least six months before the session at which it is proposed for adoption. The Convention Secretariat shall also communicate proposed amendments to the signatories of this Protocol and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to this Protocol. If all efforts at consensus have been exhausted and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative

vote. Any adopted amendment shall be communicated by the Convention Secretariat to the Depositary, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least two thirds of the Parties.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

Article 39. Adoption and amendment of annexes to this Protocol

1. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.

2. Annexes shall be restricted to lists, forms and any other descriptive material relating to procedural, scientific, technical or administrative matters.

3. Annexes to this Protocol and amendments thereto shall be proposed, adopted and enter into force in accordance with the procedure set forth in Article 38.

PART X: FINAL PROVISIONS

Article 40. Reservations

No reservations may be made to this Protocol.

Article 41. Withdrawal

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the WHO Framework Convention on Tobacco Control shall also be considered as having withdrawn from this Protocol, with effect as of the date of its withdrawal from the WHO Framework Convention on Tobacco Control.

Article 42. Right to vote

1. Each Party to this Protocol shall have one vote, except as provided for in paragraph 2.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to the Protocol. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice versa.

Article 43. Signature

The Protocol shall be open for signature by all Parties to the WHO Framework Convention on Tobacco Control at World Health Organization Headquarters in Geneva from 10 to 11 January 2013, and thereafter at United Nations Headquarters in New York until 9 January 2014.

Article 44. Ratification, acceptance, approval, formal confirmation or accession

1. This Protocol shall be subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations that are Party to the WHO Framework Convention on Tobacco Control. It shall be open for accession from the day after the date on which the Protocol is closed for signature. Instruments of ratification, acceptance, approval, formal confirmation or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party without any of its Member States being a Party shall be bound by all the obligations under this Protocol. In the case of organizations one or more of whose Member States is a Party, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the Member States shall not be entitled to exercise rights under this Protocol concurrently.

3. Regional economic integration organizations shall, in their instruments relating to formal confirmation or in their instruments of accession, declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification to the extent of their competence.

Article 45. Entry into force

1. This Protocol shall enter into force on the ninetieth day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.

2. For each Party to the WHO Framework Convention on Tobacco Control that ratifies, accepts, approves or formally confirms this Protocol or accedes thereto after the conditions set out in paragraph 1 for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval, accession or formal confirmation.

3. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States Members of that organization.

Article 46. Depositary

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

Article 47. Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

3. World Intellectual Property Organization

BEIJING TREATY ON AUDIOVISUAL PERFORMANCES. BEIJING, 24 JUNE, 2012*

Preamble

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of performers in their audiovisual performances in a manner as effective and uniform as possible,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the Convention Establishing the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of audiovisual performances,

Recognizing the need to maintain a balance between the rights of performers in their audiovisual performances and the larger public interest, particularly education, research and access to information,

Recognizing that the WIPO Performances and Phonograms Treaty (WPPT) done in Geneva on December 20, 1996, does not extend protection to performers in respect of their performances fixed in audiovisual fixations,

Referring to the Resolution concerning Audiovisual Performances adopted by the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions on December 20, 1996,

Have agreed as follows:

Article 1. Relation to other conventions and treaties

1. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the WPPT or the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome on October 26, 1961.

2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

* Adopted by the Diplomatic Conference on the Protection of Audiovisual Performances held in Beijing from 20 to 26 June 2012 (Doc. AVP/DC/20).

3. This Treaty shall not have any connection with treaties other than the WPPT, nor shall it prejudice any rights and obligations under any other treaties.[1, 2]

Article 2. Definitions

For the purposes of this Treaty:

(*a*) "performers" are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;[3]

(*b*) "audiovisual fixation" means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device;[4]

(*c*) "broadcasting" means the transmission by wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

(*d*) "communication to the public" of a performance means the transmission to the public by any medium, otherwise than by broadcasting, of an unfixed performance, or of a performance fixed in an audiovisual fixation. For the purposes of Article 11, "communication to the public" includes making a performance fixed in an audiovisual fixation audible or visible or audible and visible to the public.

Article 3. Beneficiaries of protection

1. Contracting Parties shall accord the protection granted under this Treaty to performers who are nationals of other Contracting Parties.

2. Performers who are not nationals of one of the Contracting Parties but who have their habitual residence in one of them shall, for the purposes of this Treaty, be assimilated to nationals of that Contracting Party.

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[1] Agreed statement concerning Article 1: It is understood that nothing in this Treaty affects any rights or obligations under the WIPO Performances and Phonograms Treaty (WPPT) or their interpretation and it is further understood that paragraph 3 does not create any obligations for a Contracting Party to this Treaty to ratify or accede to the WPPT or to comply with any of its provisions.

[2] Agreed statement concerning Article 1(3): It is understood that Contracting Parties who are members of the World Trade Organization (WTO) acknowledge all the principles and objectives of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and understand that nothing in this Treaty affects the provisions of the TRIPS Agreement, including, but not limited to, the provisions relating to anti-competitive practices.

[3] Agreed statement concerning Article 2(a): It is understood that the definition of "performers" includes those who perform a literary or artistic work that is created or first fixed in the course of a performance.

[4] Agreed statement concerning Article 2(*b*): It is hereby confirmed that the definition of "audiovisual fixation" contained in Article 2(*b*) is without prejudice to Article 2(c) of the WPPT.

Article 4. National treatment

1. Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty and the right to equitable remuneration provided for in Article 11 of this Treaty.

2. A Contracting Party shall be entitled to limit the extent and term of the protection accorded to nationals of another Contracting Party under paragraph (1), with respect to the rights granted in Article 11(1) and 11(2) of this Treaty, to those rights that its own nationals enjoy in that other Contracting Party.

3. The obligation provided for in paragraph (1) does not apply to a Contracting Party to the extent that another Contracting Party makes use of the reservations permitted by Article 11(3) of this Treaty, nor does it apply to a Contracting Party, to the extent that it has made such reservation.

Article 5. Moral rights

1. Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audiovisual fixations, have the right:

(i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and

(ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audiovisual fixations.

2. The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

3. The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.[5]

Article 6. Economic rights of performers in their unfixed performances

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

[5] Agreed statement concerning Article 5: For the purposes of this Treaty and without prejudice to any other treaty, it is understood that, considering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that are made in the course of a use authorized by the performer, would not in themselves amount to modifications within the meaning of Article 5(1)(ii). Rights under Article 5(1)(ii) are concerned only with changes that are objectively prejudicial to the performer's reputation in a substantial way. It is also understood that the mere use of new or changed technology or media, as such, does not amount to modification within the meaning of Article 5(1)(ii).

(i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

(ii) the fixation of their unfixed performances.

Article 7. Right of reproduction

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in audiovisual fixations, in any manner or form.[6]

Article 8. Right of distribution

1. Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in audiovisual fixations through sale or other transfer of ownership.

2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.[7]

Article 9. Right of rental

1. Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in audiovisual fixations as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.

2. Contracting Parties are exempt from the obligation of paragraph (1) unless the commercial rental has led to widespread copying of such fixations materially impairing the exclusive right of reproduction of performers.[8]

Article 10. Right of making available of fixed performances

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

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[6] Agreed statement concerning Article 7: The reproduction right, as set out in Article 7, and the exceptions permitted there under through Article 13, fully apply in the digital environment, in particular to the use of performances in digital form. It is understood that the storage of a protected performance in digital form in an electronic medium constitutes a reproduction within the meaning of this Article.

[7] Agreed statement concerning Articles 8 and 9: As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refers exclusively to fixed copies that can be put into circulation as tangible objects.

[8] Agreed statement concerning Articles 8 and 9: As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refers exclusively to fixed copies that can be put into circulation as tangible objects.

Article 11. Right of broadcasting and communication to the public

1. Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.

2. Contracting Parties may in a notification deposited with the Director General of WIPO declare that, instead of the right of authorization provided for in paragraph (1), they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public. Contracting Parties may also declare that they will set conditions in their legislation for the exercise of the right to equitable remuneration.

3. Any Contracting Party may declare that it will apply the provisions of paragraphs (1) or (2) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply the provisions of paragraphs (1) and (2) at all.

Article 12. Transfer of rights

1. A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.

2. A Contracting Party may require with respect to audiovisual fixations produced under its national law that such consent or contract be in writing and signed by both parties to the contract or by their duly authorized representatives.

3. Independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under this Treaty including as regards Articles 10 and 11.

Article 13. Limitations and exceptions

1. Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

2. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer.[9]

[9] Agreed statement concerning Article 13: The Agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty (WCT) is applicable *mutatis mutandis* also to Article 13 (on Limitations and Exceptions) of the Treaty.

Article 14. Term of protection

The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.

Article 15. Obligations concerning technological measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances, which are not authorized by the performers concerned or permitted by law.[10, 11]

Article 16. Obligations concerning rights management information

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right covered by this Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances or copies of performances fixed in audiovisual fixations knowing that electronic rights management information has been removed or altered without authority.

2. As used in this Article, "rights management information" means information which identifies the performer, the performance of the performer, or the owner of any right in the performance, or information about the terms and conditions of use of the performance, and any numbers or codes that represent such information, when any of these items of information is attached to a performance fixed in an audiovisual fixation.[12]

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[10] Agreed statement concerning Article 15 as it relates to Article 13: It is understood that nothing in this Article prevents a Contracting Party from adopting effective and necessary measures to ensure that a beneficiary may enjoy limitations and exceptions provided in that Contracting Party's national law, in accordance with Article 13, where technological measures have been applied to an audiovisual performance and the beneficiary has legal access to that performance, in circumstances such as where appropriate and effective measures have not been taken by rights holders in relation to that performance to enable the beneficiary to enjoy the limitations and exceptions under that Contracting Party's national law. Without prejudice to the legal protection of an audiovisual work in which a performance is fixed, it is further understood that the obligations under Article 15 are not applicable to performances unprotected or no longer protected under the national law giving effect to this Treaty.

[11] Agreed statement concerning Article 15: The expression "technological measures used by performers" should, as this is the case regarding the WPPT, be construed broadly, referring also to those acting on behalf of performers, including their representatives, licensees or assignees, including producers, service providers, and persons engaged in communication or broadcasting using performances on the basis of due authorization.

[12] Agreed statement concerning Article 16: The Agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WCT is applicable *mutatis mutandis* also

Article 17. Formalities

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

Article 18. Reservations and notifications

1. Subject to provisions of Article 11(3), no reservations to this Treaty shall be permitted.

2. Any notification under Article 11(2) or 19(2) may be made in instruments of ratification or accession, and the effective date of the notification shall be the same as the date of entry into force of this Treaty with respect to the Contracting Party having made the notification. Any such notification may also be made later, in which case the notification shall have effect three months after its receipt by the Director General of WIPO or at any later date indicated in the notification.

Article 19. Application in time

1. Contracting Parties shall accord the protection granted under this Treaty to fixed performances that exist at the moment of the entry into force of this Treaty and to all performances that occur after the entry into force of this Treaty for each Contracting Party.

2. Notwithstanding the provisions of paragraph (1), a Contracting Party may declare in a notification deposited with the Director General of WIPO that it will not apply the provisions of Articles 7 to 11 of this Treaty, or any one or more of those, to fixed performances that existed at the moment of the entry into force of this Treaty for each Contracting Party. In respect of such Contracting Party, other Contracting Parties may limit the application of the said Articles to performances that occurred after the entry into force of this Treaty for that Contracting Party.

3. The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.

4. Contracting Parties may in their legislation establish transitional provisions under which any person who, prior to the entry into force of this Treaty, engaged in lawful acts with respect to a performance, may undertake with respect to the same performance acts within the scope of the rights provided for in Articles 5 and 7 to 11 after the entry into force of this Treaty for the respective Contracting Parties.

Article 20. Provisions on enforcement of rights

1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

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to Article 16 (on Obligations concerning rights management information) of the Treaty.

Article 21. Assembly

1. (*a*) The Contracting Parties shall have an Assembly.

(*b*) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.

(*c*) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

2. (*a*) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(*b*) The Assembly shall perform the function allocated to it under Article 23(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(*c*) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3. (*a*) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(*b*) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

4. The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.

5. The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 22. International bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 23. Eligibility for becoming party to the Treaty

1. Any Member State of WIPO may become party to this Treaty.

2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

3. The European Union, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 24. Rights and obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 25. Signature of the Treaty

This Treaty shall be open for signature at the headquarters of WIPO by any eligible party for one year after its adoption.

Article 26. Entry into force of the Treaty

This Treaty shall enter into force three months after 30 eligible parties referred to in Article 23 have deposited their instruments of ratification or accession.

Article 27. Effective date of becoming Party to the Treaty.

This Treaty shall bind:

(i) the 30 eligible parties referred to in Article 26, from the date on which this Treaty has entered into force;

(ii) each other eligible party referred to in Article 23, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

Article 28. Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 29. Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

2. An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 30. Depositary

The Director General of WIPO is the depositary of this Treaty.

Chapter V

DECISIONS OF THE ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

A. United Nations Dispute Tribunal

By resolution 67/241 of 24 December 2012, entitled "Administration of justice at the United Nations", the General Assembly took note of the reports of the Secretary-General on administration of justice at the United Nations, on amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and on the activities of the United Nations Ombudsman and Mediation Services, and endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions. The General Assembly also requested that the rules of procedure of the Dispute Tribunal and the Appeals Tribunal be amended accordingly whenever a decision of the Assembly entailed a change. In this regard, the Assembly recalled paragraph 35 of its resolution 66/237, in which it had addressed the execution of judgments of the Dispute Tribunal imposing financial obligations on the Organization pending an appeal with the Appeals Tribunal, and noted that corresponding changes to the rules of procedure of the Dispute Tribunal and the Appeals Tribunal had not yet been made.

In 2012, the United Nations Dispute Tribunal in New York, Geneva and Nairobi issued a total of 208 judgments. Summaries of nine selected judgments are reproduced below.

[1] In view of the large number of judgments which were rendered in 2012 by the administrative tribunals of the United Nations and related intergovernmental organizations, only those judgments which address significant issues of United Nations administrative law or are otherwise of general interest have been summarized in the present edition of the *Yearbook*. For the full text of the complete series of judgments rendered by the tribunals, namely, Judgments Nos. UNDT/2012/001 to UNDT/2012/208 of the United Nations Dispute Tribunal, Judgments Nos. 2012-UNAT-189 to 2012-UNAT-279 of the United Nations Appeals Tribunal, Judgments Nos. 3051 to 3151 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 461 to 469 of the World Bank Administrative Tribunal, and Judgment Nos. 2012–1 to 2012–3 of the International Monetary Fund Administrative Tribunal, see, respectively, documents UNDT/2012/001 to UNDT/2012/208; 2012-UNAT-189 to 2012-UNAT-279; *Judgments of the Administrative Tribunal of the International Labour Organization: 112th and 113th Sessions; World Bank Administrative Tribunal Reports, 2012; and International Monetary Fund Administrative Tribunal Reports, Judgment No. 2012–1 to 2012–3.*

1. *Judgment No. UNDT/2012/027 (16 February 2012) Servas* v. *Secretary-General of the United Nations*[2]

Implementation of settlement agreement reached through mediation—Competence of Tribunal under article 8, paragraph 2 of its Statute—Request to review performance appraisal and retroactively change title and grade of Applicant—Compensation not appropriate when damage not substantiated

On 27 October 2011, the Applicant, a former staff member of the International Trade Centre ("ITC"), filed an application pursuant to article 8, paragraph 2 of the Tribunal's Statute to enforce the implementation of a settlement agreement reached through mediation. The Applicant maintained that by failing to change the functional title on her performance appraisal under the Performance Appraisal System from G-5 Programme Assistant to P-2 Associate Advisor and demonstrating bad faith and negligence in the payment of the P-2 salary retroactively owed to her, the ITC did not comply with its obligations under the agreement.

The said agreement, which was signed by the parties on 29 June 2011, provided in relevant part that: "The International Trade Centre shall retroactively separate and reappoint [the Applicant] to the P-2 level, step I as from June 1st 2010 until the expiration of [the Applicant's] current appointment on July 18th 2011." By a letter dated 11 July 2011, the Applicant requested that her performance appraisal for the period from 1 June to 31 December 2010 be changed, with the title of P-2 Associate Programme Officer replacing that of G-5 Programme Assistant. The Applicant's temporary contract was renewed through 18 July 2011, at which time she left the employ of the ITC. That same day, she received an amended letter of appointment from ITC which retroactively covered the period from 1 June 2010 to 18 July 2011 and bore the title of P-2 Associate Adviser. By a letter dated 21 July 2011, the ITC held that it had met all conditions of the settlement agreement and rejected the Applicant's request to change her title as given on her performance appraisal. Subsequently, the Applicant filed her application to the Tribunal.

In considering the Applicant's claims, the Tribunal first determined that when requested to exercise its jurisdiction under article 8, paragraph 2 of its Statute, its competence was limited to verifying whether the agreement reached through mediation had been implemented. Applying this rule to the facts of the case, the Tribunal found that the settlement agreement signed by the parties on 29 June 2011 necessarily involved retroactively placing the Applicant as of 1 June 2010 in the administrative situation she would have been if she had been appointed to a P-2 post. Therefore, it required the revision of the Applicant's performance appraisal for the period from 1 June 2010 to 31 December 2010. Since the ITC had rejected the Applicant's request to change her title as given on her performance appraisal, the Tribunal ordered the ITC to transmit to the Applicant a revised performance appraisal indicating that the Applicant was evaluated as a P-2 Associate Adviser.

With regard to the Applicant's request for compensation, the Tribunal found that she had not substantiated any damage caused by the ITC's failure to make the correction to her performance appraisal, and that it would not therefore be appropriate to grant her compensation.

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[2] Judge Jean-François Cousin (Geneva).

2. *Judgment No. UNDT/2012/056 (19 April 2012) Fagundes* v. *Secretary-General of the United Nations*[3]

Formation of employment contract—Definition of contract, offer and acceptance—Standard essential terms of employment contract—Annex II of Staff Regulations—Unconditional acceptance by a candidate of the conditions of an offer of appointment before the issuance of a letter of appointment can form a valid contract—Lack of jurisdiction of the Tribunal—Applicant not a staff member

In or about September 2006, the Applicant applied as an external candidate for the advertised P-3 level position of Public Information Officer with the United Nations Stabilization Mission in Haiti ("MINUSTAH"), Department of Peacekeeping Operations ("DPKO"). She was interviewed on 4 October 2006. On 27 September 2006, she received an email from MINUSTAH, which stated:

> I am pleased to inform you that you have been selected to serve with the United Nations Stabilization Mission in Haiti (MINUSTAH) as Public Information Officer.
>
> You will be contacted in the next coming week by the Personnel Management & Support Service, Office of Mission Support in the Department of Peacekeeping Operations with all the details of your recruitment and we look forward [to] welcoming you to MINUSTAH in the very near future.

On the same day, the Applicant replied: "Many thanks for the excellent news! I look forward to joining MINUSTAH". She also took steps to prepare herself for deployment, including by selling her car, subletting her apartment and disconnecting her mobile phone.

On 11 October 2006, MINUSTAH provided the Applicant's name as the selected candidate to the Integrated Human Resources Management Team of Personnel Management and Support Services ("PMSS"), DPKO, for evaluation. In or around November 2006, PMSS made the decision not to select the Applicant for the post based on her previous employment history. The Applicant was informed of this decision on 13 December 2006. Subsequently, she sought an administrative review within the allowed time and the matter was eventually dealt with by the Joint Appeals Board, following which the Applicant filed an application with the former United Nations Administrative Tribunal. After the abolishment of the Administrative Tribunal, the case was transferred to the Dispute Tribunal effective 1 January 2010.

For the purposes of determining its competence to hear and pass judgment on the application pursuant to article 3, paragraph 1 of its Statute, the Tribunal focused its analysis on whether the Applicant and the Organization had entered into a contract. It defined a contract as an agreement giving rise to obligations which are enforced or recognised by law. In the employment context, the Tribunal asserted that a contract is generally formed upon unconditional acceptance of an offer containing the essential terms of the agreement. An offer existed where there was an expression of willingness to enter into a contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed. An acceptance represented the final and unqualified expression of assent to the terms of an offer. The Tribunal also stated that whether a binding contract had been concluded would be established by making an objective assess-

[3] Judge Carol Shaw (New York).

ment of what the parties said and did at the time of the transaction. What the parties later said they intended to do was secondary to the evidence of their contemporaneous acts.

In examining past decisions, the Tribunal noted that in *El-Khatib* 2010-UNAT-029, the United Nations Appeals Tribunal ("UNAT") had held that a contract by which an individual acquires staff member status can only be concluded validly on the date at which an official of the Organization signs the staff member's letter of appointment. In *Gabaldon* 2011-UNAT-120, however, UNAT had held that this did not mean that an offer of employment and its acceptance never produced any legal effects. The Tribunal recognized that under staff regulation 4.1, upon appointment each staff member shall receive a letter of appointment in accordance with the provisions of annex II to the Staff Regulations (Letters of appointment). In the Tribunal's estimation, however, this did not mean that the only document capable of creating legally binding obligations between the Organization and its staff has to be called a "letter of appointment". The Tribunal noted that the unconditional acceptance by a candidate of the conditions of an offer of appointment before the issuance of a letter of appointment could form a valid contract provided the candidate had satisfied all of the conditions. Recalling the decision of the Administrative Tribunal of the International Labour Organisation in Judgment No. 307, *In re* Labarthe (1977), the Tribunal observed that what mattered was the substance.

In the United Nations context, the Tribunal acknowledged that pursuant to former staff rule 104.1, a letter of appointment contains "all the terms and conditions of employment". Annex II to the Staff Regulations provides a list of terms that shall be included in a standard letter of appointment. They include, *inter alia*, the nature and the period of employment, the category and the level of the appointment, and details concerning salary and other conditions of employment (see annex II to ST/SGB/2006/1). The Tribunal accepted that not all of the terms and conditions specified in Annex II were necessarily essential components of a binding contract, but it held that at the very least a contract of employment should include, as standard essential terms, the date of commencement of work, its duration, and remuneration for the work performed.

Applying this standard to the present case, the Tribunal determined that the email of 4 October from MINUSTAH to the Applicant was missing the date at which the Applicant was required to enter upon her duties; the period of her appointment; and the step with the P-3 level as well as the commensurate rate of salary. The Tribunal also noted that subsequent communications between MINUSTAH and the Applicant did not provide this essential information.

Based on its analysis the Tribunal found that no contract of employment was concluded by the Applicant and the Organization. Furthermore, the Tribunal held that the Applicant was not a staff member at the time the decision was made not to select her for the vacancy, and therefore the Tribunal did not have jurisdiction over the case.

3. *Judgment No. UNDT/2012/067 (9 May 2012) Mokbel* v. *Secretary-General of the United Nations*[4]

Judgment on relief—Emotional harm as a result of incorrectly imposing disciplinary charges and delay in dismissing the charges—Degree of emotional harm attributable to Respondent—Compensatory nature of award—Scale of severity of harm—Compensation

On 1 May 2012, the Tribunal issued a judgment on liability (*Mokbel* UNDT/2012/061), which concerned allegations by the Applicant about the manner in which he was treated, including the lengthy delay before the disciplinary charges against him were dismissed. Subsequently, on 7 May 2012, the Tribunal held a hearing to give the Applicant the opportunity to explain and justify the basis upon which he claimed compensation for what he referred to as mental anguish and distress and issued this judgment on relief.

The Tribunal first determined that under article 10, paragraph 5 (b) of its Statute, it may order compensation to an aggrieved party. That the Applicant may receive compensation for emotional harm, such as distress and anxiety, followed, in the Tribunal's opinion, from the jurisprudence of the United Nations Appeals Tribunal (see, for instance, *Wu* 2010-UNAT-042 and *Antaki* 2010-UNAT-095). The Tribunal noted, however, that it was clear from a number of authorities that, before the Tribunal awarded compensation for emotional harm, there must be evidence of injury or damage (*Antaki* 2010-UNAT-095). Furthermore, in accordance with article 10, paragraph 7 of the Tribunal's Statute, such compensation may not amount to an award of punitive or exemplary damages designed to punish the Organization and deter future wrongdoing (see *Wu* 2010-UNAT-042 and *Kasynov* 2010-UNAT-76).

The Applicant's claim was solely for compensation in respect of the emotional harm he suffered as a result of the manner in which he was treated, including the delay of three years before the disciplinary charges against him were dismissed. The Tribunal noted that while it was the case that the manner in which the investigation and the disciplinary proceedings were conducted did cause the Applicant distress and anxiety, it was the degree to which such emotional harm could be attributed to the conduct of the Respondent that had to be considered. It further recognized that it was difficult to arrive at a precise sum to reflect the extent of damage suffered by a particular staff member in a given set of circumstances and that this was not an issue which lent itself to scientific quantification or certainty. The Tribunal determined that it must use its judgment to arrive at an assessment, which was fair and proper and did not diminish confidence in the ability of the system to provide, in appropriate cases, compensation that was neither paltry nor excessive. Above all, the Tribunal acknowledged that the award had to be truly compensatory.

The Tribunal sought to categorize the harm suffered by the Applicant in terms of a scale of severity. It assessed whether the Applicant was minimally, moderately, or extremely distressed by the manner in which he was treated. After analyzing the facts, the Tribunal determined that the Applicant's distress and anxiety fell somewhere between the two extremes, but below the midpoint of the scale.

Accordingly, in its judgment on relief the Tribunal ruled that the Respondent failed to compensate the Applicant for having incorrectly imposed disciplinary charges against

[4] Judge Goolam Meeran (New York).

him, including for bribery, and for the lengthy disciplinary process of three years. The Tribunal set the amount of compensation at USD 10,000 and ordered the Respondent to pay the Applicant within 60 days from the date of the judgment.

4. *Judgment No. UNDT/2012/114 (31 July 2012): Applicant* v. *Secretary-General of the United Nations*[5]

Expiration of fixed-term appointment—Notice of non-renewal—Request for management evaluation and suspension of action—Accountability motion—Meaning of contempt in administrative proceedings—Willful disobedience of Tribunal's orders—Compliance with interlocutory orders—Referral to Secretary-General pursuant to article 10, paragraph 8 of the Statute of the Tribunal—Responsibility of supervisor for actions of subordinate

The Applicant joined the Joint Medical Services at the United Nations Office at Nairobi ("UNON") on 8 June 2010 pursuant to an Agreement between UNON and the members of the United Nations Country Team Somalia dated 5 March 2010. Her fixed-term appointment was subsequently renewed up to 6 June 2012. At approximately 4:30 p.m. on 6 June 2012 she was informed that her appointment would not be renewed. She filed a request for management evaluation and a suspension of action application, which was granted by the Tribunal in an oral judgment issued on 12 June 2012. After the judgment the Applicant attempted to resume her functions, but was informed by UNON officials that she was not authorized to return to work. On 14 June 2012, the Applicant filed a Motion titled "Motion for directions, referral for accountability" ("accountability motion") requesting the Tribunal to clarify its suspension of action orders by confirming that it intended that UNON immediately undertake all reasonable steps to suspend the effect of the non-renewal of the Applicant's employment contract and that UNON's managers be referred to the Secretary-General pursuant to article 10, paragraph 8 of the Tribunal's Statute for the enforcement of accountability.

In considering the accountability motion, the Tribunal first examined the meaning of contempt in administrative (civil) proceedings, arising out of the refusal by UNON officials to implement the Tribunal's order to suspend the Applicant's personnel action pending a management evaluation. It concluded that in the context of the United Nations, the inherent jurisdiction of the Tribunal confers upon it the power to deal with contemptuous conduct, which is necessary to safeguard its judicial functions. It also determined that this power need not be defined in the Tribunal's Statute or in its Rules of Procedure, but rather that it was necessarily inherent. Willful disobedience of its orders, the Tribunal reasoned, is contempt and it represented a direct attack upon the jurisdiction of the Tribunal and its power to undertake the responsibilities with which it has been entrusted in its Statute by the General Assembly. When faced with willful disobedience of its orders, the Tribunal asserted that it must vindicate the integrity of its jurisdiction by exercising its necessarily inherent power.

With regard to the referral of the matter to the Secretary-General pursuant to article 10, paragraph 8 of the Tribunal's Statute, the Tribunal determined that it had discretion in determining whether to proceed. The fundamental issue was whether the matter was so

[5] Judge Nkemdilim Izuako (Nairobi).

serious or potentially serious as to require the personal attention of the Secretary-General. In the present case, the Tribunal concluded that UNON management had refused to obey the orders of the Tribunal and had continued to adopt every means to alter the *status quo ante*. These actions disregarded the established jurisprudence of the Tribunal as articulated in *Villamoran* 2011-UNAT-160 on the duty of parties to comply with interlocutory orders even where an appeal had been filed. Furthermore, the Tribunal reasoned that UNON officials by their actions in this case had engaged in strong arm tactics and acted as if they made their own laws in a way that no decent organization could be proud of, least of all the United Nations Secretariat. As a global organization that, among other things, had set up at least a unit whose mandate is the promotion of the rule of law worldwide, the Tribunal determined that the Secretary-General's attention needed to be called to the actions of those of his officials who trampled on the enduring principle of the rule of law and thereby enthroned and elevated impunity.

The Tribunal also addressed an argument put forth on behalf of UNON that it did not have a legal duty to comply with the Tribunal's orders because, in the opinion of the Legal Counsel of UNON, in making an order suspending the impugned decision the Tribunal had exceeded its jurisdiction. The Tribunal admonished that it was trite law that even if counsel should believe that a court order is incorrect he/she must still comply promptly or risk the imposition of sanction. In this case, the Tribunal found that the UNON Legal Counsel did not bother to maintain the *status quo* before advising disobedience of the Tribunal's Order. In addition, the Tribunal dismissed as farfetched the argument that counsel was intending to appeal and therefore could alter the *status quo*. It stated that a court order can only be reversed by an appellate court, and that counsel cannot take the law into their own hands and settle the clients rights according to his/her notion of what is right. Accordingly, the Tribunal rejected this line of argument as a justification for the actions of UNON.

Regarding the responsibility of the Director-General of UNON, the Tribunal stated that she had overall authority in all decisions and actions taken by the UNON management. This meant that, among other things, she was accountable for the unprofessional conduct and high-handedness exhibited in this case by the Legal Counsel of UNON under her watch. Moreover, the Tribunal reasoned that the choice to comply with the legal advice of a legal officer without proper and sufficient briefing on the facts and issues, as it emerged during the Director-General's testimony at the Tribunal, over and against the orders of the Tribunal, was a matter for which the Director-General must bear responsibility.

Therefore, on the issue of the accountability motion, the Tribunal decided to refer the case to the Secretary-General under article 10, paragraph 8 of the Tribunal's Statute for the purpose of considering: (i) what action should be taken in respect of the conduct of the Director-General of UNON in dealing with the complaints made by the Applicant and disregarding the Tribunal's orders and (ii) what action should be taken in respect of the conduct of the UNON's Legal Adviser in advising disobedience of the Tribunal's orders.

5. *Judgment No. UNDT/2012/123 (10 August 2012): Neault* v. *Secretary-General of the United Nations*[6]

Challenge of non-selection decision due to apparent conflict of interest—Receivability of application *ratione temporis* under article 8, paragraph 1 of the Statute of the Tribunal—Interpretation of ST/AI/2006/3/Rev.1 and the Guidelines for programme case officers on building vacancy announcements and evaluation criteria—Rejection of claim for material damage—Compensation for moral damage

The Applicant, a former staff member of the International Criminal Tribunal for the former Yugoslavia, challenged the decision not to select her for a post of Judges' Assistant in Chambers at the G-5 level on the grounds that she had an apparent conflict of interest due to her former association with the Office of the Prosecutor. In her application she claimed compensation in the amount of two years' salary and benefits at the G-5 level for the material and moral injury she suffered, the violation of her due process rights and the Administration's bad faith.

The first issue to be determined by the Tribunal was whether the application was receivable *ratione temporis*. In article 8, paragraph 1, the Tribunal's Statute provides that an application before the Tribunal must be filed within 90 days following receipt of the Administration's response to the request for management evaluation. If the Administration replies after the response period for the management evaluation but before the expiry of the 90-day period, the 90-day period to file an application before the Tribunal starts running again from the date the response is given. In the present case, the Applicant received a response to her request for management evaluation after the expiry of the response period and she filed her application within 78 days from the receipt of this late response. Accordingly, the Tribunal determined that the Applicant had met the 90 day deadline, and that her application was receivable.

With regard to the merits of the claim, the Tribunal applied administrative instruction ST/AI/2006/3/Rev.1, which governed the matter at the time the job opening was issued. In relevant part, ST/AI/2006/3/Rev.1 and the Guidelines for programme case officers on building vacancy announcements and evaluation criteria under ST/AI/2006/3/Rev.1 made apparent that the criteria to be used in evaluating candidates must be clearly stated in the vacancy announcement. In this case, the record indicated that the Administration had failed to mention that the appearance of a conflict of interest would be among the evaluation criteria. Accordingly, the Tribunal found that the Administration's selection basis and resulting non-selection decision were flawed.

The Tribunal rejected the Applicant's claim for material damage because it considered it highly speculative that the Applicant would have been selected had the selection process been properly conducted. The Tribunal did find that the irregularities in the selection process caused the Application distress, and on this basis awarded her EUR 2,000 as compensation for her moral damage.

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[6] Judge Thomas Laker (Geneva).

6. *Judgment No. UNDT/2012/135 (11 September 2012): Manco* v. *Secretary-General of the United Nations*[7]

Conflict with provisional staff rule 1.5 (c), 4.3 and 4.5 (d)—No obligation for staff member to renounce permanent residence status or apply for citizenship upon employment with the Organization—Obligation of staff member to inform the Secretary-General of any intent to change his or her nationality or permanent resident status—Hierarchy of sources—Fifth Committee report does not carry the same legal force as General Assembly resolutions—Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal—Rescission of policy—Moral damages

The Applicant contested a policy which would have required him to either renounce his permanent residence status in New Zealand or apply for citizenship there, should he wish to take up a promotion with the Office of Internal Oversight Services in Nairobi.

On 12 March 2010, the Applicant was offered a P-4 Investigator position in Nairobi. He received an email on 22 March 2010 from the Human Resources Management Services of the United Nations Office at Nairobi ("HRMS/UNON") stating:

> As you may be aware, [a candidate] selected for appointment in the Professional category and above, holding permanent residence in a country other than his or her country of nationality and who is granted a fixed term appointment of one year or longer, under the Staff Rules will have to renounce the permanent resident status or provide proof of application for citizenship prior to the appointment. Before we can proceed with processing the 2 year appointment, we would appreciate to receive satisfactory proof that you have either applied for citizenship or have renounced the permanent resident status in New Zealand.

This policy was reiterated to the Applicant by HRMS/UNON during a phone call on 26 March 2010. He was advised by HRMS/UNON that a mistake had been made in the original Offer of Appointment which did not contain the same policy as the email of 22 March 2010. On 29 March 2010, the Applicant applied for New Zealand citizenship at a cost of NZD 460. Subsequently, on 3 November 2010, the Office of Staff Legal Assistance wrote a letter on behalf of the Applicant to the Chief of HRMS/UNON requesting reimbursement of NZD 460 and the discontinuance of the policy, both with regard to the Applicant and in general. The request went unreturned. On 17 January 2011, the Applicant requested a management evaluation of the HRMS/UNON decision in regard to apply the policy and its refusal to reimburse the expenses incurred for his citizenship application. The Management Evaluation Unit responded to the Applicant on 3 March 2011, stating that he would be reimbursed NZD 460 by UNON, but that his request regarding the legality of the disputed policy was not receivable. The Applicant submitted his application to the Tribunal on 9 May 2011.

With regard to the legality of the disputed policy, in its judgment the Tribunal recalled that under the Staff Regulations, staff members' employment and contractual relationships are defined by a letter of appointment subject to regulations promulgated by the General Assembly pursuant to Article 101, paragraph 1 of the Charter of the United Nations. The Tribunal then undertook a careful review of the Provisional Staff Rules in force at the

[7] Judge Vinod Boolell (Nairobi).

relevant time. It found that the statement of practice contained in the email of 22 March 2010 to the Applicant conflicted with rule 1.5 (c), 4.3 and 4.5 (d). In particular, under those rules, the Tribunal determined that there is not and should not be any obligation on a staff member to renounce permanent residence status or apply for citizenship in that country upon employment with the Organization. The Tribunal stated that these rules impose only the obligation for a staff member to inform the Secretary-General of any intent to change his or her nationality or permanent resident status, and an obligation to renounce the latter upon employment cannot be logically inferred.

In closing submissions, Counsel for the Respondent made reference to the 25th Advisory Council on Administrative and Budgetary Questions report, which supported the disputed policy and was later confirmed by the Fifth Committee in its report A/2615. The Tribunal held that the reports of the Fifth Committee do not carry the same legal force as General Assembly resolutions. In this connection, the Tribunal recalled the hierarchy of sources as laid out in *Villamoran* UNDT/2011/126, which did not include administrative practices, administrative policies and reports of the Fifth Committee. Further, the Secretary-General was not mandated, in the absence of an express statutory provision, to incorporate into a staff member's terms of employment any policy or recommendation from a Committee. The Tribunal also stated that to condone such a practice would be tantamount to giving both the General Assembly and the Secretary-General an absolute license to impose or incorporate into terms of employment any item or matter that is not part of the Staff Regulations or Rules.

More generally, the Tribunal, referencing the General Assembly resolution containing the Code of Conduct for Judges (General Assembly resolution 66/106), stated that in the context of the modern law of employment and human rights, it would be inconceivable to countenance a situation where an individual should be sanctioned in his employment opportunities or tenure because he holds one nationality yet resides in another country.

The Tribunal held that the disputed policy was unlawful and illegitimate. It found no basis whatsoever in any of the norms of the Organization to justify its imposition. The Tribunal ordered the rescission of the policy in relation to the Applicant and awarded him moral damages of three months' net base salary to allay the uncertainty that the policy had created with regard to both his professional and personal life.

7. Judgment No. UNDT/2012/141 (24 September 2012): Cranfield v. *Secretary-General of the United Nations*[8]

Challenge to revocation of letter of appointment—Withdrawal of decision creating rights—Staff rule 11.2—Time limit for revocation of unlawful decisions by the Administration—Moral damages

In October 2011, the Applicant was informed that her fixed-term appointment had been converted retroactively into an indefinite appointment; she then signed her new letter of appointment. However, in January 2012, the Administration notified her that the letter of appointment could not be considered legally valid and it accordingly decided to revoke it. Before the Tribunal, the Applicant challenged the Administration's revocation of its prior decision.

[8] Judge Jean-François Cousin (Geneva).

According to the Appeals Tribunal's case law, a decision creating rights cannot in principle be withdrawn by the Administration. Taking this into account, the Tribunal first examined whether provisions of the organization's internal legislation allowed the Administration to reverse decisions that it had taken, when, upon re-examination, it deemed the decision unlawful, even though the decision conferred rights upon a staff member. It determined that while the Staff Regulations and Rules contained no general provisions on reversal of individual decisions that confer rights on staff members, staff rule 11.2, which governs the management evaluation process, did envisage this circumstance. Under that provision, the Administration was obliged to withdraw an administrative decision that it deemed unlawful where such decision was challenged by a staff member. The Tribunal determined that it was not appropriate to distinguish between the situation where the Administration finds of its own accord that an administrative decision is unlawful and the situation where it finds so following a request for management evaluation. Furthermore, it determined that the same time limits should apply to both situations. Accordingly, applying the time limits prescribed under staff rule 11.2, the Tribunal held that when the Administration finds of its own accord that a decision which created rights is unlawful, it was entitled to withdraw this decision within 90 days from the date on which the staff member received notification thereof.

In the present case, the Tribunal observed that the October 2011 letter of appointment conferred rights on the Applicant and that her good faith was not called into question. After a period of more than 90 days, in January 2012, the Administration then attempted to retract its decision. Even assuming that the October 2011 decision to grant the Applicant an indefinite appointment was unlawful, the Tribunal found that the Administration could not withdraw its October 2011 decision beyond the 90-day time limit. It consequently decided to rescind the January 2012 decision. As the effect of this decision was to return the Applicant to the position she was in before the revocation of the October 2011 decision, the Tribunal determined that she had suffered no material damage. The Tribunal did find, however, that the Applicant had suffered disappointment with the Administration's unlawful retraction of a decision that was favourable to her, and for this it awarded her moral damages in the amount of EUR 1,000.

8. *Judgment No. UNDT/2012/178 (16 November 2012): Korotina* v. *Secretary-General of the United Nations*[9]

Challenge of decision to disregard Applicant's work experience obtained prior to receipt of Master's degree—Receivability of claim—Standard of judicial review in non-selection cases—Hierarchy of the Organization's internal legislation—Guidelines on the determination of eligibility—Relevant professional experience—ST/AI/2006/3—Impropriety of review of eligibility after completion of the selection process—Compensation for pecuniary loss

The Applicant, a former staff member of the United Nations Secretariat in New York, contested the decision finding her ineligible for an appointment to a temporary position at the P-3 level based on the determination that, at the time of the selection process, she did not possess the necessary years of experience. The Applicant had been assured of her eligi-

[9] Judge Ebrahim-Carstens (New York).

bility, short-listed, interviewed, recommended for the position, and copied on subsequent communications, following which the Administration decided that she was not eligible.

On 28 October 2009, the Applicant had applied for a temporary vacancy at the P-3 level in the Peacekeeping Procurement Management Section. The vacancy announcement required the following:

> Experience: A minimum of five years of progressively responsible experience in procurement or administration in an international organization, of which at least two years should be directly related to firsthand procurement experience at the international level.
>
> Education: Advanced university degree (Master's degree or equivalent) in Business Administration, Public Administration, Commerce, Engineering, Law or other related field. A first level university degree with a relevant combination of academic qualifications and experience may be accepted in lieu of the advanced university degree.

The Applicant interviewed for the position in November 2009 and on 16 November 2009 she was recommended for recruitment. Thereafter, on 16 December 2009, the Office of Human Resources Management ("OHRM") sent an email to the Executive Office, Department of Management stating that based on the review of the Applicant's work experience, OHRM had determined that the total work experience of the Applicant was 3 years and 9 months. OHRM had arrived at this number because it had determined that it could not start counting the Applicant's work experience until after she had obtained her Master's Degree in June 2005. On 18 December 2009, the Executive Office informed the Applicant that she was ineligible for the P-3 position, but that she would be reappointed, with retroactive effect to 15 September 2008, at the P-2 level. On 28 January 2010, the Applicant submitted a request for management evaluation of the decision finding her ineligible for the temporary P-3 level position. She was informed by a letter dated 25 February 2010 that the Management Evaluation Unit had concluded that the contested decision was lawful. On 30 May 2010, the Applicant filed the present application.

The Tribunal first considered whether the claim was receivable, and noted that under article 2, paragraph 1 (a) of its Statute, it was competent to hear and pass judgment on an application appealing an administrative decision that is alleged to be in non-compliance with the terms of appointment or contract of employment. In the present case, the Tribunal found that the administrative decision at issue could not be described as merely preparatory, but rather signified the end of the Applicant's participation in the selection process. Therefore, the claim was receivable under the terms of the Tribunal's Statute.

With regard to judicial review of non-selection cases, the Tribunal noted that the Secretary-General enjoyed broad discretion in matters of appointment and promotion and it was not the role of Tribunal to substitute its own decision for that of the Secretary-General (*Abbassi* 2011-UNAT-110). The Tribunal asserted, however, that the exercise of managerial prerogative was not absolute, and that it may examine whether the selection procedures were properly followed or were carried out in an improper, irregular or otherwise flawed manner, as well as assess whether the resulting decision was tainted by undue considerations or was manifestly unreasonable. On this point, the Tribunal recalled a number of relevant decisions (*Krioutchkov* UNDT/2010/065, *Liarski* UNDT/2010/134, *Abbassi* 2012-UNAT-242).

The Respondent had submitted that the contested decision was in line with the Guidelines on the determination of eligibility ("Guidelines"), first approved 30 July 2004 and

revised in 2009 and 2010. On this point, the Tribunal clarified the hierarchy of the Organization's internal legislation (*Villamoran* UNDT/2011/126). At the top of the hierarchy was the Charter of the United Nations, followed by resolutions of the General Assembly, Staff Regulations, Staff Rules, Secretary-General's bulletins, and administrative instructions. The Tribunal noted that information circulars, office guidelines, manuals, and memoranda were at the very bottom of this hierarchy and lacked the legal authority vested in properly promulgated administrative issuances. The Tribunal stated that while circulars, guidelines, manuals, and other similar documents may, in appropriate situations, set standards and procedures for the guidance of both management and staff, this was only the case where they were consistent with the instruments of higher authority and other general obligations that applied in an employment relationship.

On the central issue of counting years of experience, and disregarding experience prior to a Master's degree, the Tribunal held that by not having specified that the five years of work experience had to be completed *after* the Master's degree, in the absence of properly promulgated issuances stating otherwise, the Respondent was bound by the terms of the vacancy announcement, which did not include any such requirement. The Tribunal reasoned that it was a contractual right of every staff member to receive full and fair consideration for job openings to which they apply. Even if the Guidelines contained a provision that only experience obtained after a Master's degree should be counted, the Tribunal determined that the lawfulness of such a provision would be questionable, as it would appear to be manifestly unreasonable and impose unwarranted limitations on qualification requirements. Further, the Tribunal found that the adopted unwritten practice of not counting the experience obtained prior to the Master's degree was not supported by any rules or regulations forming part of the staff member's contract and lent itself to being arbitrary and manifestly unreasonable. In the Tribunal's estimation, such a provision may constitute an unfair restriction on eligibility of a group of staff members for appointment and promotion without any basis in any of the properly promulgated administrative issuances.

Moreover, the Tribunal found that it followed from the Guidelines that "relevant professional experience" was generally any work experience after the first university degree that contributes to professional competencies/skills and prepares a candidate to perform the functions of the post, and that such experience should be counted towards the requirement of five years. The expression found in the Guidelines that "in most cases, [professional experience] will be experience gained after the first level university degree", indicated that there is no absolute or hard and fast proscription or bar, and that there was room for discretion in determining what constituted "relevant professional experience".

The Tribunal also examined the effect of the Administration's representations to the Applicant during the selection process. While not material given the Tribunal's other findings, the Tribunal did note that having informed the Applicant on several occasions that she was eligible to apply for a temporary P-3 vacancy, then having considered her for the post pursuant to such confirmations, and having short-listed, interviewed and recommended her for the post, then having included the Applicant in post-selection communications, the Respondent created an expectation that the Applicant was eligible and selected or highly-likely to be selected. The Tribunal found that, in accordance with ST/AI/2006/3, a selection process goes through separate stages, of which the review of eligibility was one of the first. Specifically, sec. 7.5 of ST/AI/2006/3 states that interviews or written tests are to be conducted *after* the candidates have been "identified as meeting all or most of the require-

ments of the post". Therefore, the Tribunal considered that in the circumstances of this case, and on the assurances given to the Applicant regarding her eligibility with respect to the temporary P-3 level vacancy, it was improper for the Administration to revisit issues of eligibility after going through the entire selection process.

Regarding compensation, the Tribunal recalled the decision of the United Nations Appeals Tribunal in *Antaki* 2010-UNAT-095, where the UNAT stated that not every violation will necessarily lead to an award of compensation and that compensation may only be awarded if it has been established that the staff member actually suffered harm. While rejecting the Applicant's claim for non-pecuniary loss for the substantial and unwarranted irregularities in the selection process, the Tribunal did find that, if not for the unlawful contested decision, the Applicant would have been appointed to the contested post. Accordingly, it concluded that the Applicant had suffered pecuniary loss equivalent to the difference between her salary and the salary she would have earned at the P-3 level during the relevant period.

In conclusion, the Tribunal found that the decision to disregard part of the Applicant's work experience because it was obtained prior to her Master's degree was unlawful. The determination that the Applicant was ineligible for the P-3 level temporary appointment was also unlawful. The Tribunal further found that, through representations made to the Applicant prior to and during the selection process, the Respondent created an expectation, in line with the standard selection procedures, that the Applicant was cleared and selected for the post. The Tribunal awarded the Applicant the amount of USD 8,496.76, with interest, as compensation for the pecuniary loss suffered.

9. *Judgment No. UNDT/2012/200 (19 December 2012): Finniss* v. *Secretary-General of the United Nations*[10]

Appeal of non-selection decision on grounds of bias—Evaluation of candidates against pre-approved criteria in accordance with paragraph 9 of ST/AI/2006/3—Test for determining the existence of bias—Presumption of regularity in selection decisions is a rebuttable presumption—Minimal standard to prove regularity of selection decision—Award of damages—Referral of case to Secretary-General to enforce accountability of responsible staff members

The Applicant appealed the decision not to select him for the post of Senior Investigator, P-5 level with the Investigations Division, Office of Internal Oversight Services (ID/OIOS) in New York, a vacancy for which he had applied and believed he was qualified. He challenged the decision arguing that it was tainted by the bias of the Program Case Officer (PCO), as well as irregularity in the interview, selection and evaluation process. This case had previously been decided by the Tribunal in favor of the Applicant on 31 March 2011 (*Finniss* UNDT/2011/060). Subsequently, the Secretary-General had filed an appeal with the United Nations Administrative Tribunal ("UNAT"). In its decision of 16 March 2012, the UNAT had remanded the matter for "fresh decision by a different judge" (*Finniss* 2012-UNAT-210) and the Applications came before the Tribunal again in September 2012.

The Tribunal analyzed evidence directed towards the Applicant's allegation of bias by the PCO of the interview panel, which was tasked with evaluating candidates and rec-

[10] Judge Carol Shaw (Nairobi).

ommending them to the decision-maker who was to make the selection decision for the post. Substantial evidence indicating a difficult professional and inter-personal relationship between the PCO and the Applicant was presented and analyzed by the Tribunal.

At the relevant time, the controlling administrative instruction for staff selection was ST/AI/2006/3. The guidelines in paragraph 9 of ST/AI/2006/3 provided that the evaluation of candidates was to be against the pre-approved evaluation criteria. From this stipulation and as a matter of fair process, the Tribunal determined that there was no room for extraneous considerations such as bias, prejudice and discrimination. The Tribunal then reasoned that, in the legal sense, bias may be actual or apparent but that either way it must be assessed objectively. If actual and conscious bias was proven as a matter of fact, then it would automatically disqualify a decision maker. The test applied by the Tribunal for determining the existence of bias was whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. Based on the evidence that it reviewed, the Tribunal had no hesitation in finding that there was a very real possibility that the PCO could be perceived to be biased against the Applicant.

The Tribunal then considered whether the PCO bias had an effect on the results accorded to the Applicant by the interview panel. The Tribunal found that there were anomalies in the evaluation and scores given to the Applicant which, in the absence of any other explanation by the Respondent, could only be explained by the bias or personal animus against him held by the PCO. It concluded that, given the presence and influence of the PCO on the interview panel members, as well as the illogical and incorrect scoring of the Applicant, it was highly probable that his evaluation was affected by bias and personal animus.

The Tribunal accepted the Respondent's submission that the Secretary-General had broad discretion in selecting candidates; however, it held that this did not make the exercise of discretion immune from review. The Tribunal asserted that any discretion must be exercised in a regular manner, in accordance with the rules and policies of the Organization, and that it must be free of improper motive and based on correct facts and evidence.

In this connection, the Tribunal recalled the principle from *Rolland* 2011-UNAT-122, where UNAT had stated:

> There is always a presumption that official acts have been regularly performed. This is called the presumption of regularity, but it is a rebuttable presumption. If the management is able to even minimally show that the appellant's candidature was given a full and fair consideration, then the presumption of law is satisfied. Thereafter the burden of proof shifts to the appellant who must be able to show through clear and convincing evidence that she was denied a fair chance of promotion.

Accordingly, the Tribunal reasoned that the Respondent bears the evidential burden of making at least a minimal showing of regularity. This was particularly so where, as in the present case, a decision was seriously called into question.

The Tribunal stated that the minimal showing of regularity and evidentiary burden is satisfied where the Respondent provides the Applicant and the Tribunal with information about the decision being challenged. This information should include the findings of fact material to the decision; the evidence on which the findings of fact were based; the reasons

for the decision and all of the documentation in the possession and control of the decision maker which is relevant to the review of the decision.

In this case, the Tribunal found that the Applicant had raised substantial questions about the regularity of the selection decision, including whether and to what degree it was influenced by the interview panel's evaluation of the Applicant. When challenged, the Respondent was unable to produce enough evidence to meet the minimal standard to prove that the selection decision was made in accordance with the rules and regulations. Therefore, the presumption of regularity was rebutted.

On the foregoing bases, the Tribunal held that the role of the PCO was vitiated by bias towards the Applicant, the evaluation of the Applicant was not objective, the selection exercise was unlawful and the Organization failed to discharge the burden of presumption of regularity. The Tribunal awarded the Applicant the difference in salary, plus interest, between the P-5 post to which he should have been appointed on 21 October 2008 and the P-4 salary, which he received up until his promotion to a separate P-5 position in January 2010. It also awarded him USD 50,000 in moral damages for the significant stress and humiliation that was caused not only by his non-selection for a post to which he was legally and actually entitled, but also by the stress and humiliation caused by the PCO in the selection process. In accordance with article 10, paragraph 8 of its Statute, the Tribunal also referred the case to the Secretary-General for appropriate action to be taken to enforce the accountability of those staff members who were responsible for the biased assessment and unlawful non-selection of the Applicant, including the members of the interview panel and the ultimate decision maker.

B. Decisions of the United Nations Appeals Tribunal

The United Nations Appeals Tribunal (UNAT) held its first session in 2012 from 5 to 16 March in New York. It held its second session in 2012 in Geneva from 18 to 29 June. Its third session was held in New York from 22 October to 2 November. The Appeals Tribunal issued a total of 91 judgments in 2012. The summaries of five of those judgments are reproduced below.

1. *Judgment No. 2012-UNAT-201 (16 March 2012): Obdeijn* v. *Secretary-General of the United Nations*[11]

Non-renewal of fixed-term appointment—Obligation of the Secretary-General to state the reasons for an administrative decision—Refusal to disclose reasons—Burden of proof—Moral damage—Compensation

The Respondent (Applicant in the first instance) entered the service of the United Nations Population Fund ("UNFPA") on a two-year fixed-term appointment ("FTA"), effective 3 October 2005. His appointment was extended twice, for periods of one year and six months, respectively.

On 13 February 2009, the Respondent was notified that his FTA would expire on 2 April. He requested the reasons for his non-renewal but was reminded that an FTA "does not carry any expectancy of renewal . . . [as it] . . . expires automatically and without prior

[11] Judge Sophia Adinyira, Presiding, Judge Inés Weinberg de Roca and Judge Jean Courtial.

notice on the expiration date specified in the letter of appointment". On 9 March, the Respondent requested administrative review of the decision not to renew his FTA. In his response of 27 March, the Executive Director, UNFPA, replied:

> Given that you have been serving with UNFPA for a period of less than five years . . . the Administration of UNFPA was permitted, in accordance with section 5.2 of the policy and the established jurisprudence of the [former Administrative] Tribunal, not to renew your appointment, *without having to justify that administrative decision* (emphasis in original).

The Respondent's appeal to the former Joint Appeals Board was transferred to the United Nations Dispute Tribunal on 1 July 2009.

On 10 February 2011, the Tribunal issued Judgment No. UNDT/2011/032. The UNDT found that the Administration had breached its obligation to disclose the reasons for its decision not to extend the Respondent's appointment, particularly in response to his requests, in violation of the requirements of good faith and fair dealing: "[l]ike any other administrative decision, a decision not to renew a staff member's contract must be reasoned, as a decision taken without reasons would be arbitrary, capricious, and therefore unlawful". The UNDT explained that reasons, in sufficient detail to enable the staff member to decide whether to proceed with a formal appeal, should be disclosed at the time of the notification of the decision and must be disclosed upon request. The UNDT ordered damages of six months' net base salary for actual economic loss suffered and USD 8,000 for emotional distress. The Secretary-General appealed the Judgment.

The Appeals Tribunal recalled, first, that the jurisprudence of the former Administrative Tribunal, whilst of persuasive value, did not bind the new Tribunals.[12] The Appeals Tribunal found that the non-renewal of an FTA was a distinct administrative decision, subject to review and appeal. When a request for the reasons underlying an impugned decision was made as part of a formal review process, the Administration's failure to provide them hampered or precluded the staff member, the Management Evaluation Unit and the Tribunals from reviewing the decision, thus compromising the Tribunals' ability to perform their judicial duty.

Accordingly, the Tribunal pointed out that the obligation for the Secretary-General to state the reasons for an administrative decision does not stem from any Staff Regulation or Rule, but is inherent to the Tribunals' power to review the validity of such a decision, the functioning of the system of administration of justice . . . and the principle of accountability of managers.

The Tribunal held that the Administration "cannot legally refuse to state the reasons for a decision that creates adverse effects on the staff member, such as a decision not to renew an FTA, where the staff member requests it or, *a fortiori*, the Tribunal orders it"; that the refusal to disclose the reasons for a contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives; and that the Tribunal is entitled to draw an adverse inference from the refusal.

In view of the foregoing, the Appeals Tribunal upheld the decision of the UNDT that, in refusing to disclose the reasons for the contested administrative decision and failing

[12] See *Sanwidi* 2010-UNAT-084, para. 37.

to discharge its burden of proving that its decision was neither arbitrary nor tainted by improper motives, the Administration's decision was unlawful. With respect to the compensation awarded by the UNDT, the Appeals Tribunal recalled that "[c]ompensation may only be awarded if it has been established that the staff member actually suffered damage". It found that the Respondent had, indeed, suffered moral damage for which he deserved compensation but that, as he had not established economic loss, that aspect of the UNDT award should be set aside. Accordingly, the Appeals Tribunal dismissed the Secretary-General's appeal and affirmed the UNDT Judgment, subject to variation of compensation.

2. *Judgment No. 2012-UNAT-231 (29 June 2012): Ortiz* v. *Secretary-General of the International Civil Aviation Organization*[13]

Termination of appointment upon completion of probationary period—Jurisdiction over International Civil Aviation Organization staff members—Article XI of the International Civil Aviation Organization Service Code—Requirement of staff regulation 4.11 to obtain written approval for termination during the probationary period—Statutory one-month notice period—Decision by Secretary-General not to follow recommendations of the Advisory Joint Appeals Board—Rescission of termination—Compensation

The Appellant entered the service of the International Civil Aviation Organization (ICAO) on 1 October 2009, on a three-year contract. His appointment was subject to the satisfactory completion of a one-year probationary period. In August 2010, he was notified that, in view of his probationary performance, his appointment was being terminated.

Having sought reconsideration by the Secretary-General of ICAO of the decision to terminate his appointment to no avail, the Appellant lodged an appeal with the ICAO Advisory Joint Appeals Board (AJAB) on 23 September 2010. The AJAB delivered its conclusions on 3 May 2011, finding that the Appellant's rights had been breached and recommending compensation of nine months' net base salary. The Secretary-General of ICAO decided not follow the AJAB recommendations but, "in the spirit of compromise", to pay the Appellant three months' net base salary. The Appellant appealed this decision to the Appeals Tribunal.

The Appeals Tribunal recalled that it had jurisdiction over ICAO staff member appeals in respect of employment or contract conditions, pursuant to article XI of the ICAO Service Code. The appeal was submitted against the final decision taken by the Secretary-General of ICAO following completion of the advisory first instance process:

Insofar as the merits of the appeal are concerned, the Appeals Tribunal found that, whilst staff regulation 4.11 required the Secretary-General to obtain written approval from the President of the ICAO Council for termination of an appointment during the probationary period, which, the Secretary-General conceded he had failed to do, the Secretary-General did obtain the approval of the President prior to the actual date of termination. Accordingly, the Appeals Tribunal found that the President's belated approval "ratified the initially flawed termination decision". However, the statutory one-month notice period to which the Appellant was entitled should have commenced only upon such ratification and

[13] Judge Jean Courtial, Presiding, Judge Luis María Simón and Judge Inés Weinberg de Roca.

he was, thus, entitled to compensation for the Secretary-General's failure to observe the termination process.

The Appeals Tribunal proceeded to affirm the AJAB finding that the Appellant was dismissed without having had the opportunity to submit comments on the Organization's characterization of his performance. Citing the International Labour Organization Administrative Tribunal in its Judgment No. 152 (1970), the Appeals Tribunal found that ICAO had not observed the Appellant's rights and that the decision was tainted with irregularity. Furthermore, noting the repeated flaws identified by the AJAB in the establishment of the Appellant's work objectives and the appraisal of his performance, the Appeals Tribunal held that it was not convinced by the grounds asserted by the Secretary-General in deciding not to follow the conclusions and recommendations of the AJAB. Accordingly, the Tribunal held that the impugned decision, as well as the decision to terminate the Appellant, should be rescinded or, in the alternative, that he should be paid compensation in the amount of nine months' net base salary, plus interest.

3. *Judgment No. 2012-UNAT-240 (29 June 2012): Johnson* v. *Secretary-General of the United Nations*[14]

Request for reimbursement of United States income taxes—Utilization of foreign tax credits amounts to payment method for discharging future tax liability—Section 18, article V, of the Convention on the Privileges and Immunities of the United Nations—United States reservation to the Convention in respect of taxation of its nationals and permanent residents—Relief from double taxation effects—Tax Equalization Fund

The Respondent (Applicant in the first instance), a national of the United States of America, was recruited by the Office of the United Nations High Commissioner for Refugees in Geneva in June 2006. In calculating her United States taxes for 2009, the Respondent used foreign tax credits of USD 15,239 to meet her income tax liability on her United Nations earnings. She had accrued these foreign tax credits under the United States Internal Revenue Service (IRS) Code in respect of an earlier period of private employment in Switzerland, during which she paid both Swiss and United States taxes. Her request for reimbursement was denied by the Income Tax Unit on the basis that, as the utilization of her foreign tax credits had reduced her tax liability to zero, she had not paid any taxes on income earned at the United Nations in 2009. The Respondent requested management evaluation of the decision not to reimburse her for the staff assessment on her salary and other emoluments earned in 2009 and, thereafter, appealed to the United Nations Dispute Tribunal (UNDT) in Geneva on 27 September 2010.

On 17 August 2011, the UNDT issued Judgment No. UNDT/2011/144. The UNDT ruled in favour of the Respondent, finding that the reason given by the Income Tax Unit for refusing to refund her was incorrect:

> Publication 514 of the [IRS], concerning foreign tax credits granted to individuals, clearly shows that these credits are a payment method like others and [she] must therefore be regarded both as having been subject to United States taxation on income received from the Organization, and as having discharged that tax obligation.

[14] Judge Jean Courtial, Presiding, Judge Sophia Adinyira and Judge Inés Weinberg de Roca.

The UNDT ordered the Secretary-General to refund the Respondent the amount of the staff assessment on her salaries and emoluments for 2009, with interest. The Secretary-General appealed this Judgment.

The Appeals Tribunal recalled that, whilst section 18, article V, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946,[15] provides "[o]fficials of the United Nations shall . . . be exempt from taxation on the salaries and emoluments paid to them by the United Nations", the United States of America acceded to the Convention subject to a reservation in respect of taxation of its nationals and permanent residents. In order to ensure equality of treatment and equity among Member States, the Organization created a Tax Equalization Fund to which assessments on staff members' salaries and emoluments are credited in the accounts of the respective Member State's assessment, in lieu of a national income tax. When a staff member is subject to both staff assessment and national income tax on salaries and emoluments earned at the United Nations, he is reimbursed for the national tax paid in order to relieve the effect of double taxation. The refund is deducted from the account of the Member State that has levied the tax.[16]

The Appeals Tribunal found that the United States of America grants foreign tax credits in respect of income tax paid by one of its nationals or permanent residents to another State in order to relieve the effects of double taxation. The tax credits amount to a payment method for discharging future tax liability and, as such, the UNDT did not err on questions of law or fact.

The Tribunal found that exclusion of such credits as payment would "[n]ot only contravene the principle of equality of treatment among staff members if staff members from the United States were deprived of the benefit of reimbursement for using such tax credits . . . , but also the principle of equity among Member States irrespective of whether they choose to grant, or not to grant, an income tax exemption to their nationals, as these two principles form the basis for the staff assessment system in respect of taxation."

The Tribunal therefore dismissed the Secretary-General's appeal and affirmed the UNDT Judgment.

4. *Judgment No. 2012-UNAT-252 (29 June 2012): Khambatta* v. *Secretary-General of the United Nations*[17]

Service of application for suspension of action—Opportunity for Secretary-General to respond—Article 13 of the United Nations Dispute Tribunal Rules of Procedure—Articles 2(2) and 10(2) of the United Nations Dispute Tribunal statute—Non-receivability of appeals against decisions taken in the course of United Nations Dispute Tribunal—Exception for cases where the United Nations Dispute Tribunal has "clearly exceeded its competence"

The Respondent (Applicant in the first instance) held a series of temporary appointments with the Office of the United Nations Stabilization Mission in Haiti (MINUSTAH),

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[15] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

[16] This system was discussed at length by the former United Nations Administrative Tribunal (UNAT) in its Judgment No. 237, *Powell*.

[17] Judge Jean Courtial, Presiding, Judge Sophia Adinyira and Judge Kamaljit Singh Garewal.

with effect from 2 June 2011. On 10 April 2012, she was informed that her temporary appointment would not be extended beyond 1 May. She sought management evaluation of the decision not to extend her temporary appointment and, on 24 April, filed an application with the United Nations Dispute Tribunal (UNDT) for suspension of action.

The Secretary-General was served with the application by the UNDT Registry the following day, and advised that no response was required as judgment would be rendered on the basis of the papers already before the Tribunal. In *Khambatta* UNDT/2012/058, issued on 26 April 2012, the UNDT ordered suspension of the decision not to extend the Respondent's contract, pending the outcome of management evaluation. The UNDT indicated that article 13 of its Rules of Procedure required it to serve the application for suspension of action on the Secretary-General, but did not oblige it to require a reply prior to ruling. The Secretary-General appealed this judgment.

The Appeals Tribunal held that, as the UNDT "enjoys wide powers of appreciation in all matters relating to case management, [the Appeals Tribunal] must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for dispensation of justice". Accordingly, and pursuant to articles 2(2) and 10(2) of the UNDT Statute as well as the consistent jurisprudence of the Appeals Tribunal,[18] appeals against decisions taken in the course of UNDT proceedings are not receivable, "save in the exceptional cases where the UNDT has clearly exceeded its competence". This principle holds even if the judge has committed an error of law or fact. The Appeals Tribunal clarified that the UNDT would exceed its competence were it to take a decision on matters beyond its statutory jurisdiction or "the competence inherent in any tribunal called upon to dispense justice in a system of administration of justice governed by law and respect for the rights of those within its jurisdiction".

The Appeals Tribunal took note of the Secretary-General's contention that the UNDT violated his rights of defence in the instant case in judging on the application for suspension of action without permitting him to respond, but found that the UNDT had not "clearly exceeded its competence". Accordingly, the Secretary-General's appeal was declared non-receivable and dismissed.

5. *Judgment No. 2012-UNAT-276 (1 November 2012): Valimaki-Erk* v. *Secretary-General of the United Nations*[19]

Requirement to change permanent residency status as a condition for appointment—Report of the Fifth Committee (A/2615)—Information Circular ST/AFS/SER.A/238—Secretary-General has no discretion to impose unwritten regulations and rules that are prejudicial to staff members

The Respondent (Applicant in the first instance) was a national of Finland and had been a permanent resident of Australia since February 2002. In July 2004, she was offered

[18] See, for example, *Bertucci* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062 (full bench, Judge Boyko dissenting); *Rawat* v. *Secretary-General of the United Nations*, Judgment No. 2012-UNAT-223; *Tetova* v. *Secretary-General of the United Nations*, Judgment No. 2012-UNAT-229; *Hersh* v. *Secretary-General of the United Nations*, Judgment No. 2012-UNAT-243; and *Bali* v. *Secretary-General of the United Nations*, Judgment No. 2012-UNAT-244.

[19] Judge Sophia Adinyira, Presiding, Judge Mary Faherty and Judge Rosalyn Chapman.

a one-year appointment with the Organization and advised that, in view of the temporary nature of the appointment, she would be allowed to retain her permanent resident status in Australia, but that "[s]hould [she] be offered a long-term appointment in the future, the personnel policy under the Staff Regulations and Rules in respect of [her] resident status in Australia would then be applied". She was given no information about this "personnel policy". The Respondent subsequently applied and was selected for a two-year appointment. She was advised, however, that the offer was conditional upon her either applying for Australian citizenship or renouncing her permanent resident status in Australia. As she was not able to do the former or willing to do the latter, she was not placed against the post.

The Respondent appealed this decision to the former Joint Appeals Board (JAB) in 2005. In its report of May 2007, the JAB found that the condition placed by the Organization lacked a reasonable basis and recommended that she should not be required to renounce her Australian permanent resident status in order to accept the two-year appointment. The Secretary-General rejected this recommendation.

The Respondent subsequently submitted an application to the former Administrative Tribunal, which was transferred to the United Nations Dispute Tribunal ("UNDT") on 1 January 2010. In *Valimaki-Erk* UNDT/2012/004, issued on 6 January 2012, the UNDT concluded that the requirement that she renounce her Australian permanent resident status as a condition for appointment lacked legal basis, as there was no such requirement in the Staff Regulations and Rules or General Assembly resolutions. Accordingly, the UNDT found that the Secretary-General was acting *ultra vires*. Whilst it rejected the Respondent's claims for financial damages, the UNDT awarded her three months' net base salary for "some moral injury" and "significant upheaval in her life". The Secretary-General appealed this Judgment.

The Appeals Tribunal took note of the report of the Fifth Committee at the eighth session of the General Assembly in 1953, document A/2615, in which it was recorded that some delegations considered permanent residence status to weaken ties with the country of nationality and not to be in the interest of the Organization. There were also tax consequences taken into consideration. However, paragraph 73 of A/2615 provides "[i] t was the understanding of the Committee that these decisions should be recorded in its report to the General Assembly for the guidance of the Secretary-General in giving effect to the policies thus approved through appropriate amendments to the Staff Rules". Over almost 60 years, no such amendments were made. Indeed, whilst Information Circular ST/AFS/SER.A/238, of 19 January 1954, specifically addressed change of permanent resident status by an existing staff member and permanent resident status in the country of a staff member's duty station, it did not require international staff to renounce their permanent residence status in a country not of their nationality prior to recruitment.

In view of the foregoing, the Appeals Tribunal found that the Secretary-General could not rely on ST/AFS/SER.A/238, or the jurisprudence of the former Administrative Tribunal that he cited.[20] Not only were those decisions not binding on the Appeals Tribunal, but the factual and legal circumstances of the cases also differed in substance from the instant case.

[20] UNAT Judgments No. 66, *Khavkine* and No. 326, *Fischman*.

As the contested policy was "not reflected in any administrative issuance", the Appeals Tribunal concluded that the Secretary-General had not fully complied with the requirements set by the Fifth Committee for its implementation and, therefore, it had no legal basis. Moreover, it agreed with the Respondent in finding that "although the Secretary-General has discretion in the appointment of staff, he has no discretion to impose unwritten regulations and rules that are prejudicial to staff members".

Furthermore, the Appeals Tribunal held that the policy could not be justified "under the pretext of ensuring geographical distribution of staff members", who are permitted more than one nationality albeit the Organization recognizing only one, and stated that "[b]earing in mind the human rights principles and the modern law of employment, [it had] no place in a modern international organization". The Tribunal dismissed the Secretary-General's appeal and affirmed the UNDT Judgment.

C. Decisions of the Administrative Tribunal of the International Labour Organization[21] [22]

1. *Judgment No. 3051 (8 February 2012): Daintith (No. 3), Hardon (No. 8) and Senfl (No. 7)* v. *European Patent Organization (EPO)*[23]

[21] 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 following 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 Nations, including the World Food Programme; European Organization for Nuclear Research; World Trade Organization; International Atomic Energy Agency; World Intellectual Property Organization; European Organisation 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; African, Caribbean and Pacific Group of States; the Agency for International Trade Information and Cooperation; European Telecommunications Satellite Organization; International Organization of Legal Metrology; International Organisation of Vine and Wine; Centre for the Development of Enterprise; Permanent Court of Arbitration; South Centre; International Organization for the Development of Fisheries in Central and Eastern Europe; Technical Centre for Agricultural and Rural Cooperation ACP-EU; International Bureau of Weights and Measures; ITER International Fusion Energy Organization; Global Fund to Fight AIDS, Tuberculosis and Malaria; and the International Centre for the Study of the Preservation and Restoration of Cultural Property. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization. For more information about the Administrative Tribunal of the International Labour Organization and the full texts of its judgments, see http://www.ilo.org/public/english/tribunal/index.htm.

[22] The Tribunal rendered a total of 101 judgments in 2012 (54 in its 112th session and 47 in its 113th session). Summaries of a selection of twelve judgments are reproduced herein.

[23] Ms. Mary G. Gaudron, Vice-President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

STATUS OF CONSULTANTS RECRUITED BY ORGANIZATIONS THROUGH SERVICE CONTRACTS—QUESTION OF RECEIVABILITY REQUIRED CONSIDERATION OF WHETHER COMPLAINANT WAS IN AN EMPLOYMENT OR *DE FACTO* EMPLOYMENT RELATIONSHIP WITH EPO—ARTICLE II, PARAGRAPH 5, OF THE STATUTE OF THE TRIBUNAL—LACK OF JURISDICTION OF THE TRIBUNAL

The complainants filed complaints in their capacity as members of the Munich Staff Committee. The complaints arose from the refusal of the President of the European Patent Office (the Office) to act on the complainants' request to terminate Mr. B.'s employment with EPO.

Mr. B., a managing director of a consultancy firm retained by EPO, had been working for the Office since 2000. The complainants alleged that certain aspects of his work at EPO, including the number of hours he worked, his relationship with EPO management hierarchy, his level of integration into the Office infrastructure and the fact that his assigned tasks were operational in nature and not project related, showed that he was in substance an employee of EPO.

The complainants contended that, properly construed, the consultancy contracts under which he provided his services to the Office were an attempt by EPO to circumvent standard recruitment procedures as prescribed by the Service Regulations. As a result, the complainants had been deprived of their right as staff representatives [members of the selection panel appointed by the Staff Committee] to be involved in the recruitment process. They also contended that Mr. B.'s remuneration was higher than that of regular staff members who were carrying out the same duties, which constituted a breach of the right of equal treatment.

The Tribunal considered that as the claimed right was limited to the recruitment of permanent employees, the question of receivability required a consideration of whether Mr. B. was in an employment or *de facto* employment relationship with EPO.

Given that Mr. B. did not have a direct contractual relationship with EPO, the contract under which he performed his services was between a consultancy firm and EPO, and as he was paid for his services by that firm and not the Office, it was clear that he was not in an employment relationship with EPO. However, the question remained whether Mr. B. was a *de facto* employee, as the complainants alleged.

The complainants maintained that Mr. B was integrated into the Office infrastructure. Although EPO provided him with a user identification number, access to the Office computer system, a listing in the internal telephone directory and an office with his name on the door, and although he worked under the supervision of an EPO manager, it was not disputed that his listing in the internal telephone directory and his user identification number clearly indicated that he was not an employee of EPO. Nor did the complainants challenge the Internal Appeals Committee's finding that it was standard practice to give external staff such technical and organizational support as was necessary to permit them to do the work for which they were retained.

During the material time, Mr. B. also worked as a consultant for several other agencies and corporations. As well, between 2000 and 2005, he averaged only 70 work days per year at the Office and in only one of those years did he slightly exceed 100 work days, in contrast with 220 days minus annual leave and public holidays for an EPO employee. Lastly, the contracts under which Mr. B.'s services were provided to EPO specified that they were governed by German law.

Having regard to those factors, the Tribunal determined that it could not be said that Mr. B. was in any sense an employee of EPO and it followed that the Service Regulations did not apply to him. Accordingly, the Staff Committee's claimed right under the Service Regulations was not engaged. Article II, paragraph 5, of the Statute of the Tribunal provided that the Tribunal was competent to hear "complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations". The Tribunal therefore considered that the complaints were beyond its jurisdiction.

2. *Judgment No. 3061, Application for interpretation of Judgment No. 2092 (8 February 2012): Antonakakis (No. 3)* v. *United Nations Industrial Development Organization (UNIDO)*[24]

Request for retroactive extension of appointment and payment of entitlements—Delay in implementation of judgement—Failure to provide banking particulars for payment—Payment date for the purpose of interest calculation

In Judgment No. 2902, the Tribunal ordered, in part:

> "[. . .] UNIDO shall pay the complainant the salary and allowances he would have received had his appointment been renewed until 30 June 2006 [. . .]"[25]

In the complainant's view, that meant that his appointment should have been extended retroactively and that he was therefore entitled to all the benefits he would have enjoyed had he remained in service until 30 June 2006. At the time of implementation of the judgment, UNIDO had not paid his pension entitlements, his health insurance coverage, or his annual leave or other entitlements for the period 1 January to 30 June 2006.

Relying on the Tribunal's interpretation of Judgment No. 2902,[26] the complainant sought to have all the above-mentioned entitlements restored. UNIDO disputed his interpretation of the Tribunal's decision and asked the Tribunal to dismiss the complaint.

The Tribunal considered that the interpretation of phrases such as "full salary", "salary and related emoluments" and "salary and allowances" was well settled in the Tribunal's case law.[27] Had it been its intent, the Tribunal would have specifically ordered the payment of the entitlements claimed by the complainant. For those same reasons, the Tribunal rejected the complainant's interpretation in the case.

UNIDO pointed out that it had been in a position on 11 March 2010 to make full payment to the complainant, in accordance with the terms of the judgment. However, implementation of the judgment had been delayed due to the complainant's failure to provide UNIDO with the particulars of the bank account to which payment should be made, and the filing of the complaint. Therefore, UNIDO asked the Tribunal, should it dismiss the complainant's application, to confirm that UNIDO might treat the date of payment for the purpose of interest calculation as 11 March 2010. As the complainant did not dispute his

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[24] Ms. Mary G. Gaudron, Vice-President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

[25] See Judgment No. 2902 (3 February 2010).

[26] *Ibid*.

[27] See Judgment No. 2718 (9 July 2008); and Judgment No. 2621 (11 July 2007).

failure to provide banking particulars, the Tribunal set the date of payment for the purpose of interest calculation was as 11 March 2010.

3. Judgment No. 3065 (8 February 2012): Meyer (No. 4) v. *International Labour Organization (ILO)*[28]

Accusation of harassment—Failure to apprise complainant of testimony amounting to breach of duty of care and of good governance—Award of damages for moral injury—Costs

On 15 May 2009, an official was appointed, with the complainant's agreement, to conduct an in-depth investigation into certain allegations of harassment. The official issued a report on 8 December 2009 in which he concluded that "[t]he facts as established from the written evidence and interviews [did] not lead to a finding of harassment in this case". In the light of this report, by a letter of 15 January 2010 the Director-General notified the complainant of his decision to dismiss her allegations of harassment. The complainant impugned the decision and asked the Tribunal to set it aside, to order redress for the injury which she allegedly suffered and to award her costs in the amount of 3,000 Swiss francs.[29]

The Tribunal considered that, even if an investigator could not invite a complainant to attend all the witness interviews, the complainant ought to have been apprised of the content of the testimonies in order to be able to challenge them. Since that was not the case, the Tribunal found that the adversarial principle had not been respected. It followed therefore that the Organization had acted in breach of its duty of care towards the complainant and its duty of good governance, thereby depriving the complainant of her right to be given an opportunity to prove her allegations.[30]

The Tribunal recalled that according to its case law, an accusation of harassment required that "an international organization both investigate the matter thoroughly and accord full due process and protection to the person accused". Furthermore, the Tribunal underlined that "[i]ts duty to a person who makes a claim of harassment requires that the claim be investigated both promptly and thoroughly, that the facts be determined objectively and in their overall context [. . .], that the law be applied correctly, that due process be observed and that the person claiming, in good faith, to have been harassed not be stigmatised or victimised on that account."[31]

The Tribunal considered that the Organization's attitude had therefore caused an injury which had to be redressed by an award of damages for moral injury in the amount of 20,000 Swiss francs. The Tribunal further decided that the complainant was entitled to the sum of 2,000 Swiss francs in costs.

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[28] Mr. Seydou Ba, President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

[29] See Judgment No. 3064 (8 February 2012).

[30] See Judgment No. 2654 (7 February 2007), paragraph 7 of the considerations.

[31] See Judgment No. 2973 (2 February 2011), paragraph 16 of the considerations, and the case law cited therein.

4. Judgment No. 3076 (8 February 2012): Laperrière (No. 3) v. *World Health Organization (WHO)*[32]

Leave without pay granted for pension purposes extended the status as a staff member of the Organization—Complaint irreceivable for failure to exhaust internal means of redress

In July 2009, the complainant concluded a separation agreement with WHO, which provided for a period of leave without pay, to enable the complainant to continue making contributions to the United Nations Joint Staff Pension Fund:

> "As from 1 August 2009 until 30 November 2011, you will be on leave without pay for pension and staff health insurance purposes only [. . .] for a period of 28 months, ending on 30 November 2011."

Considering that the separation agreement had been breached, the complainant filed a complaint directly with the Tribunal on 14 May 2010, when he was on leave without pay. The Organization contended that the complaint was irreceivable because all internal remedies had not been exhausted. To demonstrate the receivability of his complaint, the complainant sought to demonstrate that, being on leave without pay, he was no longer a staff member of WHO and that he did not have recourse to the internal appeal process.

The Tribunal rejected the complainant's arguments on receivability. Regardless of the various references to the separation clearance process, the separation agreement was unambiguous with respect to the complainant's date of separation from service and his employment status. Paragraph 1 of the agreement provided that "[his] appointment as a WHO *staff member* will come to an end on 30 November 2011" (emphasis added). As that language was clear, the general rule that ambiguities would be construed against the drafter of an instrument had no application.[33]

Regarding the complainant's argument based on staff rule 655.3,[34] which in part allowed the Director-General to authorize leave without pay for pension purposes, the Tribunal noted that the purpose of the leave period was to permit continued participation in the United Nations Joint Staff Pension Fund. Participation in the Fund was contingent on having staff member status. The Tribunal further highlighted that termination of salary and benefits was a normal feature of leave without pay and reflected the fact that the staff member was not performing his or her employment functions.

The Tribunal observed that as a staff member, the complainant was required to exhaust the internal means of redress before bringing his complaint to the Tribunal. Consequently, as the complainant had failed to exhaust the internal means of redress, the Tribunal decided the complaint was irreceivable.

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[32] Ms. Mary G. Gaudron, Vice-President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

[33] See for example, Judgment No. 2292 (4 February 2004), paragraph 10 of the considerations.

[34] "The Director-General may authorize leave without pay for pension purposes for staff who are within two years of reaching age 55 and 25 years of contributory service, or who are over that age and within two years of reaching 25 years of contributory service."

5. *Judgment No. 3078 (8 February 2012): Andrevet* et al. v. *Eurocontrol*[35]

Challenge of pension contribution rates—Joinder of claims—Decisions that have recurring effects are time-barred—Dismissal of application for costs

The 11 complainants filed identical complaints in which they challenged their pension contribution rates as contained in their payslips for February, March and April 2009, on the basis that actuarial studies performed since 2005 were not valid. The Joint Committee for Disputes considered that the internal appeals were time-barred and covered by the principle of *res judicata*, as the Tribunal had previously ruled on the matter in Judgment 2633 of 11 July 2007.[36]

The complainants impugned the Director General's decision of 1 October 2009, which endorsed the unanimous opinion of the Joint Committee for Disputes and rejected their internal appeals as inadmissible and legally unfounded. The Tribunal decided that since the complaints raised the same issues of fact and law and seek the same redress, they should be joined to form the subject of a single judgment.

The Tribunal held that decisions that had recurring effects were time-barred. It considered that the complainants were attacking a decision from 2005 which had changed their pension contribution rate. While it was true that the change was reflected in their February, March and April 2009 payslips, it was also true that the claim was based entirely on alleged flaws in the previous authoritative decision, and that the change had been reflected in each of their payslips since the original decision had been made to change the pension scheme in 2005. Therefore, the Tribunal considered that the basis for the current complaints was the 2005 decision and that unless the complaints were based on a new fact they were time-barred and therefore irreceivable.[37] The Tribunal also decided to dismiss the Agency's application for costs.

6. *Judgment No. 3090 (8 February 2012): Rockwell* v. *World Intellectual Property Organization (WIPO)*[38]

Long succession of short-term contracts may give rise to a legal relationship equivalent to that applicable to permanent staff members of an organization—Error of law—Discriminatory treatment giving rise to compensation *ex aequo et bono*

The complainant joined WIPO in January 2002. She worked there as a clerk at the G3 level, under 24 successive short-term contracts, until December 2008. The Tribunal had always refused to redefine short-term contracts as career contracts.[39] On 19 December

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[35] Mr. Seydou Ba, President, Ms. Mary G. Gaudron, Vice-President and Giuseppe Barbagallo, Judge.

[36] See also Judgment No. 295 (8 July 2010); *In re Kunstein-Hackbarth* Judgment No. 1780 (9 July 1998); and *In re Meyler* Judgment No. 978 (27 June 1989).

[37] See Judgment No. 3078 (8 February 2012), paragraph 7 of the considerations.

[38] Mr. Seydou Ba, President, Ms. Mary G. Gaudron, Vice-President, Mr. Claude Rouiller, Mr. Giuseppe Barbagallo and Mr. Patrick Frydman, Judges (Geneva).

[39] See *inter alia*, Judgment No. 2850 (8 July 2009); Judgment No. 2821 (8 July 2009); Judgment No. 2708 (6 February 2008); Judgment No. 2362 (14 July 2004); Judgment No. 2198 (3 February 2003); *In re Ndedi* Judgment No. 1560 (11 July 1996); and *In re Kock, N'Diaye and Silberreiss* Judgment No. 1450 (6 July 1995).

2008, the Organization offered her another short-term contract for the period 22 December 2008 to 20 March 2009, which stipulated in its "Special Conditions" section the following:

"This contract shall not be renewed beyond 20 March 2009."

The complainant alleged that, having been employed under a long succession of short-term contracts, she was in the same situation as staff members appointed for an unlimited duration.

The Tribunal found that the short-term contracts had been systematically renewed without any notable breaks, with the result that, as from the age of 27, the complainant had pursued a career in the Organization for more than seven years, until the expiry of the disputed contract. That long succession of short-term contracts gave rise to a legal relationship between the complainant and WIPO equivalent to that applicable to permanent staff members of an organization.

In considering that the complainant belonged to the category of temporary employees to whom the Staff Rules and Staff Regulations did not apply and who did not enjoy legal protection comparable to that enjoyed by other staff members, the Tribunal considered that the defendant had failed to recognize the real nature of its legal relationship with the complainant. In so doing, it had committed an error of law and misused the regulations governing temporary contracts.

The Tribunal therefore decided to set aside the impugned decision. In view of all the circumstances of the case, the Tribunal did not remit the case to the Organization to consider the possibility of restoring the complainant's employment relationship, which had ended more than two years earlier.

The Tribunal observed that the defendant's erroneous legal assessment had resulted in the complainant being kept in a precarious employment situation throughout her service, although her work had not been designed to meet any specific and particular needs, but consisted in the performance of duties similar to those assigned in principle to permanent staff members. The complainant had therefore been treated in a discriminatory manner.

In view of all those circumstances, the Tribunal held that it was justifiable to set *ex aequo et bono* the damages due to the complainant under all heads at 60,000 Swiss francs.

7. Judgment No. 3013 (8 February 2012): Taverdyan (Nos. 1 and 2) v. *International Labour Organization (ILO)*[40]

Participation in Young Professionals Career Entrance Programme on fixed-term basis does not give rise to legitimate expectation of future employment—Article 4.6 paragraph (d) of International Labour Organization Staff Regulations—In the absence of an internal rule on pregnancy during employment, the Organization has no obligation to extend the employment relationship to cover the pregnancy period—Right to protection from dismissal for a reason connected to maternity

The complainant joined the International Labour Office in January 2001 within the framework of the fixed-term Young Professionals Career Entrance Programme (YPCEP).

[40] Ms. Mary G. Gaudron, Vice-President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

The complainant was notified on 29 February 2008 that, due to budgetary constraints, her contract would not be renewed upon its expiry on 30 April 2008. The complainant contested, *inter alia*, the non-renewal of her contract.

The complainant contended that she had a legitimate expectation of pursuing a career in the Organization due to her participation in the YPCEP, and that her participation in that programme could somehow be considered a guarantee of future employment by the Organization. The Tribunal found that that contention was unfounded. The contractual terms which the complainant agreed to when entering the programme and again with each contract renewal were clear in that they were for fixed-term periods and created no expectation of renewal.

The Tribunal also noted that the complainant's argument that her notification of termination during pregnancy had violated Swiss employment law was mistaken. The complainant was on a fixed-term contract, the expiry date of which was set at the time of appointment and at each renewal thereafter. Moreover, the Tribunal observed that the offer of appointment specifically referred to article 4.6 paragraph (d) of the Staff Regulations which stated, in relevant part, that "[w]hile a fixed-term appointment may be renewed, it shall carry no expectation of renewal or of conversion to another type of appointment, and shall terminate without prior notice on the termination date fixed in the contract of employment".

According to the Tribunal, the fact that the complainant was notified of the Organization's decision not to renew her contract upon its set expiry on 30 April 2008, and then shortly thereafter informed the Human Resources Department that she was pregnant, was not in breach of any rules. The applicable rules in the case were those of the Organization and, as the Joint Advisory Appeals Board had pointed out, ILO Staff Regulations made no provision relevant to that issue. In those circumstances, the Tribunal found that the Organization was correct in stating that the fact

> "that there is no published policy (rule, regulation or office procedure) concerning the non-renewal of fixed-term officials whose contracts are due to expire during pregnancy, affirms that termination or non-renewal during pregnancy is only permitted for reasons completely unrelated to the pregnancy. When the contract of a fixed-term official is due to expire during pregnancy or maternity leave, it is consistent practice for the Organization to honor the contract period in full. However, the Organization does not extend the contract period for the sole purpose of continuing the period of employment to cover the pregnancy and maternity leave".

In the Tribunal's view, that position was not inconsistent with Swiss employment law. In particular, the provision of the Swiss Code of Obligations which the complainant cited referred specifically to the termination of employment during the contract term, notified during protected periods (pregnancy, post delivery, etc.) and did not refer to the natural expiry of a fixed-term contract. The Tribunal further noted that the relevant provision of the Swiss Code of Obligations was fully in line with the general principle according to which everyone should have the right to protection from dismissal for a reason connected with maternity found in article 33(2) of the Charter

of Fundamental Rights of the European Union[41] and article 8 of the ILO Maternity Protection Convention, 2000 (No. 183).[42]

8. *Judgment No. 3106 (4 July 2012): Spina (No. 5)* v. *United Nations Industrial Development Organization (UNIDO)*[43]

Res judicata does not operate in the case of a prior judgment on the irreceivability of a complaint—Principle of freedom of association—Non-interference of the Organization in the affairs of its staff union or the organs of its staff union—Freedom of discussion and debate—Law of defamation—Duty of care to provide a safe and secure workplace and duty to protect the complainant's dignity and reputation—Material and moral damages

Following a dispute within the Staff Union between the complainant, a former president of the Union and a Union member, the latter sent an e-mail to the complainant, with all UNIDO staff copied. A subsequent complaint against the Organization for failure to intervene in the dispute was held irreceivable by the Tribunal in Judgment No. 2538.[44]

Several months after the delivery of the judgment on 12 July 2006, the complainant learned that a copy of the e-mail in question was on a bulletin board on the Organization's Intranet system. He requested the Director of the Human Resource Management Branch to submit his complaint against the author of the e-mail to the Joint Disciplinary Committee. In her response, the Director declined to take action. The complainant then sought review of the decision and asked that the e-mail be removed immediately from the Intranet bulletin board, that its author "be instructed to write [. . .] an open letter of apology" and that the Organization pay him compensation in the sum of 25,000 euros for the "continued injury to [his] reputation and dignity". He was informed that the e-mail in question was no longer publicly available and that his request was also refused.

The Organization argued that the internal appeal was irreceivable based on the principle of *res judicata*, as the issues raised in the internal appeal had been dealt with in Judgment No. 2538. However, the Tribunal noted that, while the complaint had been dismissed as irreceivable,[45] there had been no judgment on the merits, and thus, the complaint was not barred by *res judicata*.

The Tribunal considered that there were two aspects to the complaint. The first concerned the Organization's failure to take action against the author of the e-mail. The second aspect concerned the presence of the e-mail on the intranet bulletin board. In that regard, the complainant sought to hold the Organization liable for the allegedly defamatory content of the e-mail.

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[41] Available from http://www.europarl.europa.eu/charter/pdf/text_en.pdf (accessed on 31 December 2012).

[42] United Nations, *Treaty Series*, vol. 2181, p. 253.

[43] Ms. Mary. G. Gaurdron, Vice-President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

[44] Judgment No. 2538 (12 July 2006).

[45] *Ibid*.

The Tribunal considered the question whether the Organization had been under a duty to protect the complainant from the actions of the author of the e-mail in the light of the principle of freedom of association.

In the Tribunal's view, the principle had two important aspects. The first was that it precluded interference by an organization in the affairs of its staff union or the organs of its staff union.[46] The Tribunal considered that a staff union should be free to conduct its own affairs, to regulate its own activities and, also, to regulate the conduct of its members in relation to those affairs and activities.[47] The Tribunal further noted that an organization should remain neutral when differences of opinion emerged within a staff union: "it must not favour one group or one point of view over another". Nor did an organization have any legitimate interest in the actions of staff members in their dealings with their staff union and/or other staff union members with respect to the affairs and activities of the union.

The second aspect of freedom of association that, in the Tribunal's view, was relevant to the case was that it necessarily involved freedom of discussion and debate. The Tribunal had acknowledged that the freedom of discussion and debate was not absolute and that there could be cases in which an organization could intervene if, for example, there was "gross abuse of the right to freedom of expression or lack of protection of the individual interests of persons affected by remarks that are ill-intentioned, defamatory or which concern their private lives."[48]

Within that context, the Tribunal considered the allegedly defamatory nature of the e-mail in question. According to the Tribunal, the law of defamation was not concerned solely with the question whether a statement was defamatory in the sense that it injured a person's reputation or tarnished his or her good name. It was also concerned with the question whether the statement was made in circumstances that afforded a defence. As a general rule, a statement, even if defamatory in the sense indicated, would not result in liability in defamation if it was made in response to criticism by the person claiming to have been defamed or if it was made in the course of the discussion of a matter of legitimate interest to those to whom the statement was published and, in either case, the Tribunal considered that the extent of the publication was reasonable in the circumstances.

In view of the circumstances, the Tribunal decided that the circulation of the e-mail by its author had not involved any abuse of the freedom of speech which necessarily attended freedom of association. Thus, UNIDO could not have investigated the actions of the author of the e-mail in question nor taken any other action against him without interfering in Staff Union affairs. The Tribunal therefore dismissed the claim that UNIDO breached its duty to the complainant by failing to take action against the author of the e-mail in question.

With regard to the second posting of the e-mail on the Organization's Intranet, the Tribunal stated that any re-publication of the e-mail amounted to excessive publication and, thus, was not entitled to the same protection that attached to the original e-mail.

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[46] See *In re Guastavi (No. 2)* Judgment No. 2100 (30 January 2002), paragraph 15 of the considerations.

[47] See *In re Connolly-Battisti (No. 2)* Judgment No. 274 (12 April 1976), paragraph 22 of the considerations.

[48] See Judgment No. 2227 (16 July 2003), paragraph 7 of the considerations.

Notwithstanding, the Tribunal observed that there was no evidence to suggest that the e-mail on the bulletin board had been widely read. Nor was there any evidence to suggest that its presence on the bulletin board had been the result of ill will or any intentional act that could be attributed to the Organization.

The Tribunal noted that an organization had a duty of care to ensure that material that injured the reputation or dignity of its staff members did not find its way into any of its authorized channels of communication. The complainant was entitled to file a claim against the Organization for its breach of that duty, even though the offending material had been removed from the bulletin board before he lodged his internal appeal. In those circumstances, the Tribunal decided that the complainant was entitled to material and moral damages. Given that the evidence did not permit a finding that the e-mail had been widely read on the bulletin board and, in the absence of evidence of any actual damage to the complainant's reputation by reason of its presence on the board, the Tribunal assessed those damages at 1,000 euros.

9. Judgment No. 3130 (4 July 2012): Madanpotra v. *World Health Organization (WHO)*[49]

Complaint for violations of Selection Guidelines—Flaws in selection process—Required number of panel members—Absence of inordinate delays meriting an award of damages

The complainant applied for the post of National Professional Officer (Planning & Monitoring) at WHO Country Office for India, and was notified of his non-selection on 22 April 2008. He appealed that decision before the Regional Board of Appeal which recommended that his appeal should be dismissed and the Regional Director endorsed that recommendation in a letter dated 12 February 2009. The complainant appealed that decision before the Headquarters Board of Appeal (HBA), which recommended to maintain the selection but award compensation and costs because the selection process had been flawed. The Board further recommended that the complainant's other claims should be dismissed and that the Selection Guidelines should be reviewed and updated, and applied in a consistent manner throughout the Organization. In a letter dated 7 April 2010 the Director-General notified the complainant of her decision to accept those recommendations. That complainant impugned the decision before the Tribunal.

The complainant alleged several violations of the Selection Guidelines. In particular, he contended that the Interview Panel was comprised of four members instead of three and that the written test was administered by the Country Office for India and not by a Personnel Officer of the Regional Office. He also asserted that the successful candidate did not fulfil the educational requirements of the post as listed in the vacancy notice.

The Tribunal agreed with the HBA findings that the directives contained in the Selection Guidelines regarding the required number of panel members are specific and that these directives were not followed. According to the Tribunal, the Organization's assertion that the Selection Guidelines merely constitute recommended practices, rather than binding rules, was mistaken. The Tribunal observed that while an interview panel could consist of only two members when necessary, there was no provision stipulating that members could be added to the three prescribed by the Selection Guidelines.

[49] Mr. Seydou Ba, President, Mr. Giuseppe Barbagallo Ms. Dolores M. Hansen, Judges (Geneva).

The Tribunal found that the successful candidate did satisfy the educational requirements of the post and did not find any evidence of bias on the part of the Administration since it considered that a procedural flaw did not automatically imply bias or prejudice.

The complainant requested an award of USD 10,000 in damages for unreasonable delays in internal appeal proceedings. However, considering that the two appeals took less than two years to complete, the Tribunal observed that the complainant could not be considered to have suffered from inordinate delays meriting an award of damages.

The Tribunal highlighted that an organisation should be careful to abide by the rules on selection and warned that when the process proves to be flawed, the Tribunal would quash any resulting appointment, albeit on the understanding that the organisation should "shield" the successful candidate from any injury.

In light of the above, the Tribunal set aside the impugned decision and the decision of 2 April 2008 to approve the appointment of the successful candidate. The Tribunal found that the complainant had already been awarded fair compensation, and thus, no further award was made. The Tribunal decided the complainant was entitled to costs in the total amount of USD 1,000.

10. Judgment No. 3135 (4 July 2012): Senou v. *Technical Centre for Agricultural and Rural Cooperation*[50]

Non renewal of contract on grounds of unsatisfactory performance—Grounds to determine compensation in lieu of period of notice—Overview of case law on vested rights—Criteria for determining breach of a vested right—Counterclaim for costs dismissed

The contract of the complainant, who had been employed by the organization since 1987, was not renewed on the grounds of unsatisfactory performance. The non-renewal decision specified that, in line with the Technical Centre for Agricultural and Rural Cooperation ("Centre") Staff Regulations adopted in a decision of 2006, the complainant would receive compensation in lieu of notice equivalent to nine months' remuneration. The provisions in question stated that, "[t]he length of the period of notice shall be one month for each completed year of service, subject to a minimum of three months and a maximum of nine months".

The complainant submitted a complaint to the Director, in which she emphasized that her contract had been signed in February 2005 under the Centre's previous Staff Regulations laid down in 1992. The complainant therefore contended that she was entitled to compensation calculated on the more favourable basis provided in the previous regulations, which corresponded to 20.7 months' notice. The Director rejected the complaint on the grounds that the fact that the complainant's contract had been signed while the previous Staff Regulations were still in force did not prevent the application of the new Staff Regulations to the matter in dispute.

The Tribunal first observed that the terms of employment of staff members of international organizations might vary according to amendments of the existing Staff Regula-

[50] Mr. Seydou Ba, President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges (Geneva).

tions or Staff Rules, notwithstanding any references to the original provisions as might be contained in their employment contracts.

The Tribunal reiterated that a provision was retroactive only if it effected some change in a person's existing legal status, rights, liabilities or interests from a date prior to its proclamation, but not if it merely altered the effects of that status or of those rights, liabilities or interests in the future.[51] The Tribunal considered that the new provision did not alter the compensation in lieu of notice already paid to the complainant, but only introduced a new rule on the subject, which was subsequently applied to her.

The Tribunal considered that the complainant would have had grounds for relying on the more favourable provisions of the 1992 Staff Regulations if she had gained a vested right to their continued application. However, according to the Tribunal's case law, as established, *inter alia*, in Judgment No. 61, clarified in Judgment No. 832 and confirmed in Judgment No. 986, in order for there to be a breach of a vested right, the amendment to the applicable text must relate to a fundamental and essential term of employment within the meaning of Judgment No. 832.

In applying the three criteria that had been identified by the Tribunal in Judgment No. 832 to determine whether a breach of acquired rights had occurred, namely the nature of the altered term of employment, the reason for the change, and the consequence of recognizing or not recognizing a vested right, the Tribunal confirmed that there had been no such breach in the instant case. The Tribunal observed that the nature of the altered term of employment stemmed from a clause of the complainant's employment contract, which could normally have been an indication that a right had been vested. However, that clause only reflected the existing provisions of article 35 of the 1992 Staff Regulations with the result that it actually stemmed from those provisions themselves. The Tribunal highlighted that unlike individual decisions or the specific terms of a staff member's contract, the provisions of staff regulations or staff rules rarely gave rise to vested rights.

The Tribunal found that the reasons for the disputed change rested on legitimate grounds and that the fact that the amendment of the term of employment was prompted by financial considerations did not in itself make it unlawful. In addition, the Tribunal considered that the reduction in the compensation in lieu of notice was not so substantial that it upset her contractual arrangements, since, *inter alia*, the 9 months' notice was still a very substantial benefit, and that length of time was still appreciably better than that generally established by national laws.

With regard to the Centre's request for costs, the Tribunal observed that it made such an order only in exceptional circumstances and that "it was essential that international civil servants should have open access to the Tribunal without facing the dissuasive or chilling consequences that such an order might have". The Tribunal decided that although the complaint had to be dismissed, it should not be regarded as vexatious and it therefore dismissed the Centre's counterclaims.

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[51] See, *inter alia,* Judgment No. 2315 (4 February 2004), paragraph 23 of the considerations; and see also Judgment No. 2986 (2 February 2011), paragraph 14 of the consideration.

11. Judgment No. 3138 (4 July 2012): Bahr (Nos. 2 and 3) v. *International Telecommunication Union (ITU)*[52]

Compensation request for excessive length of suspension—Moral injury—Suspension should not be ordered except in cases of serious misconduct—Right to be heard—Accessing a staff member's e-mail account in his or her absence—Duty of care of the Union—National taxes paid on sums awarded by the Tribunal are not refundable in the absence of cause of action

The complainant neglected to forward some important e-mails to her supervisors, although that was part of her job description. During an administrative investigation launched by the Secretary-General to ascertain what had become of those e-mails, her professional e-mail account was accessed while she was on leave. The investigator concluded that the e-mails in question had been deleted after having been read and that they could only have been deleted by the complainant herself or by a person who knew her password.

The Chief of the Department of Administration and Finance informed the complainant that the Secretary-General was contemplating disciplinary action against her and invited her to submit any comments she might have. Pending receipt thereof and any additional investigation to which they might give rise, the complainant was immediately suspended from duty, with pay.

The complainant submitted her comments. On the same day, she also requested a further review of the decision to suspend her from duty; that request was denied. The complainant lodged an appeal with the Appeal Board, which recommended that the Secretary-General should acknowledge that the suspension had been unjustified and should award her compensation in the amount of 5,000 Swiss francs for the moral injury suffered. The Secretary-General informed the complainant that he had decided not to follow those recommendations. That was the decision impugned before the Tribunal in the third complaint.

In the meantime, the complainant had been informed that her contract had been extended "as an interim precautionary measure" and that the Secretary-General had decided not to pursue disciplinary proceedings and not to renew her contract when it expired.

Later, the complainant requested, *inter alia,* compensation for the injury resulting from the inordinate length of her suspension. As she received no reply, she requested a further review of what she considered to be an implied rejection of her claims. The Chief of the Department of Administration and Finance informed her that, since "after the initial period of suspension . . . [she had] not been sent any decision informing [her] of the steps undertaken by the Administration to find her another post", that situation might have caused her moral injury for which the Secretary-General was "prepared to grant compensation" of up to 5,000 Swiss francs. The complainant impugned that decision in her second complaint.

The Tribunal considered that the suspension of a staff member, even if it was only an interim measure, could undermine that person's esteem within the employing organization and might affect the person's health. It observed that even if suspension was not neces-

[52] Mr. Seydou Ba, President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

sarily predictive of the substantive decision to be taken regarding a disciplinary measure, it was manifestly a decision that adversely affected the person concerned and one that must be legally founded, justified by the requirements of the Organization and in accordance with the principle of proportionality. The Tribunal further reiterated that suspension should not be ordered except in cases of serious misconduct.[53]

The complainant submitted in her third complaint that her right of defence had been breached, because she had not been heard before the decision was taken to suspend her from duty, and that decision had been based on an investigation report resting on information obtained after her professional e-mail account was "hacked".

The Tribunal observed that ITU Staff Rules did not make any provision for the staff member concerned to be heard before the suspension decision was announced since suspension was an interim precautionary measure which should be adopted urgently. However, the Tribunal noted that the person's right to be heard should be exercised before the substantive decision was taken to impose a disciplinary measure.[54] The Tribunal found no reason to depart from that case law, given that after being suspended from her duties the complainant had been able to submit her comments.

The Tribunal found it was regrettable that the complainant's professional e-mail account had been consulted in her absence. However, it observed that the evidence showed that she had been informed that such a technical review was imminent and had to be carried out urgently. The Tribunal considered that none of the circumstances on which she relied proved that, if indeed she was not able to be present, she could not have been represented.

The complainant also argued that the conditions laid down in the Staff Rules for ordering a suspension had not been met in her case, because she had not committed serious misconduct and her continuance in office was not prejudicial to the service. The Tribunal noted that four important and apparently urgent e-mails from national authorities had been received in the inbox of the Conferences and Event Organization Division, that the complainant had a duty to forward them to her supervisors, and that they had been deleted without having been forwarded. The Tribunal considered that the complainant's omission could have constituted serious misconduct.

The Tribunal observed that according to the Staff Rules, suspension should normally not exceed three months while in the instant case, it lasted for more than seven months. Therefore, the Tribunal found that the Union had breached its duty of care towards the complainant leaving her in a state of uncertainty as to the possible adoption of a disciplinary measure and by not informing her of the solutions it was considering for her professional future. The Tribunal considered that compensation of 5,000 Swiss francs offered to the complainant was insufficient relief for that injury and that the amount should be raised to 12,000 Swiss francs.

The Tribunal dismissed the complainant's request to rule that, if the sums awarded were to be subject to national taxation, she would be entitled to claim a refund of the tax paid from the Organization.

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[53] See Judgment No. 2698 (6 February 2008), paragraph 9 of the considerations.

[54] See Judgment No. 2365 (14 July 2004), paragraph 4(a) of the considerations.

12. *Judgment No. 3141 (4 July 2012): Touré* v. *World Health Organization (WHO)*[55]

Recruitment of local staff staying illegally in Switzerland—Article VII, paragraph 4, of the Statute of the Tribunal—Non-suspensive effect of a complaint—Form of an administrative decision—Failure of an international organization to ensure compliance of its officials status with the laws of the host State governing the residence of aliens upon recruitment—Directives of the Permanent Mission of Switzerland, 1987—Duty of protection and assistance—Article VIII of the Statute of the Tribunal—Tribunal's power to order performance of an obligation not fulfilled by an international organization

The complainant, an Ivorian national, was first employed by WHO on 4 December 2006. At the time of the events giving rise to the dispute, he was employed at the G.3 level, on another temporary appointment covering the period from 1 January to 30 June 2008. When he was recruited by WHO, the complainant, who had arrived in Switzerland in February 2001 on a tourist visa that had expired, did not hold a residence permit from the Swiss authorities.

In June 2007, while he was on his third contract, the complainant submitted his first application for a *carte de légitimation* (identification card for international civil servants) to the WHO Administration. In support of that application, instead of the residence permit which was normally required, he produced a power of attorney with the letterhead of the trade union organization UNIA. WHO then forwarded the file to the Permanent Mission of Switzerland, which was responsible for delivering the *cartes de légitimation* issued by the Federal Department of Foreign Affairs. The *carte de légitimation* was never delivered.

On 10 April 2008, the complainant was summoned to the *Office cantonal de la population* (immigration office) in Geneva for an interview to clarify his status under the laws governing the right of residence in Switzerland. At that interview, which took place on 29 April, he was informed that no *carte de légitimation* could be issued to a person who was unlawfully present in Switzerland and that he had to leave the national territory by 15 May at the latest. He was also informed that the only means of regularizing his stay was for him to return to Côte d'Ivoire and apply for an entry visa at the Swiss embassy in that country, supporting his application with a copy of his WHO contract.

At a meeting, after the complainant had announced that he had decided to comply with the Swiss authorities' order by returning to Côte d'Ivoire on 16 May, his supervisors assured him that his contract would be honoured until its normal expiry date of 30 June 2008. On account of developments just before his departure, which indicated that his appointment had been suddenly terminated without him being informed, he decided to cancel his trip to Côte d'Ivoire and remain in Switzerland.

On 8 July, the complainant lodged an appeal with the Headquarters Board of Appeal against what he considered to be the Organization's decision of 15 May to terminate his appointment early. By decision of 7 April 2010, the Director-General rejected the complainant's appeal. The complainant impugned that decision before the Tribunal.

As a preliminary request, the complainant had asked that his complaint should be granted suspensive effect as protection against possible expulsion by the Swiss authorities. However, the Tribunal decided the preliminary request was irreceivable since article

[55] Mr. Seydou Ba, President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

VII, paragraph 4, of its Statute specified that "[t]he filing of a complaint shall not involve suspension of the execution of the decision impugned".[56]

The principal submission of WHO was that the complainant's appointment had not in fact been terminated on 15 May 2008 and that his appeal to the Headquarters Board of Appeal and subsequent complaint before the Tribunal had both been irreceivable, because they had not been directed against a decision taken by a duly authorized official of the Organization. The Tribunal recalled that it established in its case law that an administrative decision might take any form and that, even if it was not put in writing, its existence might be inferred from a factual context demonstrating that it had indeed been taken by an officer of the Organization.[57]

The Tribunal then turned to the main question of whether the Organization had really decided to terminate the complainant's contract on 15 May 2008. The Tribunal noted, that in its first memorandum to the Headquarters Board of Appeal of 16 July 2008, WHO had explained that, on learning from the Permanent Mission of Switzerland that the complainant would be ordered to leave Swiss territory, it had decided to terminate his contract on 15 May 2008 in order to "regularize the matter with the Swiss authorities". According to the Tribunal, that memorandum showed that it was only when the Organization realized that it had itself committed a fault, by not properly checking whether the complainant had a right of residence when he was recruited, that the decision was finally taken to honour the contract until 30 June 2008, but solely to allow for the payment of the complainant's remuneration.

In the Tribunal's view, the complainant's awareness of the disputed termination of his appointment and the failure to inform him immediately of the decision to rescind it certainly played a role in his decision to cancel his trip to Côte d'Ivoire. The Tribunal considered that the complainant had good reason to fear that if the Swiss embassy in Côte d'Ivoire were to consult the Organization about the expiry date of his appointment he would certainly have been refused an entry visa.

The Tribunal observed that on the merits, the decision of the Director-General of 7 April 2010 and the disputed termination of the complainant's appointment were not based on any of the allowable grounds for termination and were therefore declared unlawful and set aside by the Tribunal

The Tribunal emphasized that the manner in which WHO handled the case amounted to serious wrongdoing. The Tribunal observed that when recruiting its officials, an international organization should ensure that their status complied with the laws of the host State governing the residence of aliens, failing which it might be held responsible for abuses of the privileges and immunities conferred upon it and upon its staff members. The Tribunal noted that by forwarding his application for a *carte de légitimation*, WHO had given the complainant reason to believe that his presence in Switzerland would be regularized by virtue of his employment in the Organization. The Tribunal further observed that according to the Directives of the Permanent Mission of Switzerland, 1987[58] with which

[56] See *In re Souilah* Judgment No. 1584 (30 January 1997), paragraph 6 of the considerations.

[57] See, *inter alia*, Judgment No. 2573 (7 February 2007), paragraph 8 of the considerations or Judgment No. 2629 (11 July 2007), paragraph 6 of the considerations.

[58] Available from: http://www.eda.admin.ch (accessed on 31 December 2012).

international organizations headquartered in Geneva were deemed to be familiar, no *carte de légitimation* could be issued in any case whatsoever to a person who was unlawfully present in the country at the time of his or her recruitment by one of those organizations.

The Tribunal noted that, although that issue was not raised anywhere in the submissions, it was a moot point whether, in the circumstances of the case, it was not up to WHO to grant the complainant the benefit of the duty of protection and assistance which every international organization owed to its staff members under a general principle of international civil service law established by the International Court of Justice in an advisory opinion of 11 April 1949[59] and confirmed by the Tribunal in one of its earliest cases.[60] Absent any submissions on the matter, the Tribunal decided not to determine the issue.

The Tribunal decided that it could not condone the complainant's remaining in Switzerland up until that point, given that, as he had not challenged the decision of the *Office cantonal de la population* through the appropriate legal channels, he was bound to comply with it and that, after the expiry of his appointment on 30 June 2008, he could no longer rely on the immunity bestowed on an international civil servant.

The Tribunal determined that WHO should be held responsible for depriving the complainant of the possibility of regularizing his stay in Switzerland and thereafter possibly continuing in service in the Organization. The Tribunal decided that within one month of delivery of the judgment, WHO should offer the complainant a six-month temporary appointment on the same terms of employment in all respects as that of 3 January 2008. Performance of that contract would, however, be subject to the prior regularization of the complainant's situation in respect of the right to temporary residence in Switzerland, either through the granting of an entry visa by the Swiss embassy in his country of origin, or, if appropriate, through the issue of a residence permit by the *Office cantonal de la population*. The Tribunal also found that pursuant to article VIII of the Statute of the Tribunal, provided that the complainant regularized his stay in Switzerland, there were grounds for ordering the Organization to request that he should be issued a *carte de légitimation* according to the normal procedure.[61]

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[59] *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports, 1949,* p. 174.

[60] See *In re Jurado* Judgment No. 70 (11 September 1964).

[61] See Judgment No. 2720 (9 July 2008), paragraph 17 of the considerations.

D. Decisions of the World Bank Administrative Tribunal[62]

1. *Decision No. 467 (27 June 2012): BW* v. *International Bank for Reconstruction and Development*[63]

Jurisdictional challenge—Binding nature of mutually agreed separation agreements—Burden of proof lies on the party seeking invalidation of the agreement—Staff member's obligation to be familiar with staff rules affecting terms of employment—Timeliness of an application—Computation of the critical date

The Applicant challenged the validity of a Mutually Agreed Separation agreement ("MAS") she signed in March 2002 as a result of which she was precluded from receiving early unreduced pension at the age of 50 as is permitted under certain provisions of the Bank's Staff Retirement Plan. The Applicant's principal claim was that the MAS was invalid because it was improperly administered without due process. She claimed that she was harassed and unduly influenced to sign the MAS and was given no explicit instruction about the MAS and its effects on her future livelihood. The Applicant added that she had been informed by various members of Bank's Human Resources and Pension departments that she could receive an unreduced pension if she retired at 50. Additionally, the Applicant argued that the date of the occurrence of the event giving rise to the Application should be computed from the date she became aware of the effect of the MAS on her pension, namely, August 2011, rather than March 2002 when she signed it.

The Bank filed a preliminary objection to the admissibility of the Application. According to the Bank, the Application was inadmissible as time-barred and due to the fact that the Applicant had failed to exhaust internal remedies as required by article II(2) of the Tribunal's Statute. The Bank argued that the MAS should not be subject to litigation "ten years after the fact" and stated that the Applicant had not alleged any exceptional circumstances which would justify the Tribunal granting her relief from or suspension of the requirements for admissibility under article II(2). Similarly, the Bank contended that there were no hidden clauses in the MAS. According to the Bank, the Applicant received a severance payment under the terms of the MAS and the Bank's pension rules in existence in 2002 made it clear that "severance payments must be waived by staff to maintain eligibility for any applicable pension or reappointment." The Bank argued that as the Applicant

[62] The World Bank Administrative Tribunal is competent to hear and pass judgment 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, the Multilateral Investment Guarantee Agency and the International Centre for the Settlement of Investment Disputes (collectively "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 payment under any provision of the Staff Retirement Plan. For more information on the World Bank Administrative Tribunal and full texts of its decisions, see http://www.worldbank.org/tribunal (accessed on 31 December 2012).

[63] The judgment was rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Francis M. Ssekandi, and Ahmed El-Kosheri.

did not waive the severance payment, she was not entitled to receive an unreduced pension at the age of 50.

In addressing the timeliness of the Application, the Tribunal observed that article II(2) required that an Application was filed, in the absence of exceptional circumstances, within 120 days after the latest of the following: (a) the occurrence of the event giving rise to the application; (b) receipt of notice, after the applicant had exhausted internal remedies, that the requested relief would not be granted; or (c) receipt of notice that the requested relief would be granted, if such relief was not granted within 30 days after the receipt of such notice. The Tribunal accepted the Bank's argument that the Applicant's claims regarding the validity of the MAS on grounds of due process, duress, harassment or undue influence were time-barred and she had not demonstrated any basis on which those claims could be considered timely.

The Tribunal addressed the Applicant's argument that the date of the occurrence of the event giving rise to the Application should be computed from the date she became aware of the effect of the MAS on her pension. The question therefore was when did the Applicant become aware, or should reasonably have been aware, of the effect of the MAS on her pension rights. The Tribunal held that a compelling case must be presented by the party asking for the invalidation of the MAS, and that the burden is higher in cases where a challenge is lodged more than ten years after the MAS was signed. In this case, the Tribunal found that the burden had not been discharged by the Applicant and held that in view of the seriousness of her situation in 2002 as she perceived and had described it, it was her responsibility to keep track of the effect of important documents she signed. The Applicant was unable to produce any evidence of alleged conversations or email correspondence assuring her that she would be able to receive an unreduced pension if she retired at age 50. The Tribunal further noted that it is the responsibility of staff members to familiarize themselves with applicable rules governing their employment, including the Staff Retirement Plan.

The Tribunal recalled that it had consistently given effect to the terms of agreements such as that in the present case explaining that "if such agreements were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise agreements [. . .] It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements."[64] Nevertheless, the Tribunal stressed that settlement agreements presented by the Bank to staff members could be more explicit regarding their impact on the retirement benefits of staff members signing such agreements, thereby leaving no doubt that staff members are on notice of important consequences that may not otherwise be apparent on the face of the agreement. The Tribunal considered that such non-disclosure could be considered actionable in certain circumstances. As such circumstances were not present in this case, the Application was dismissed.

[64] *Mr. Y* v. *International Finance Corporation*, Decision No. 25 (4 September 1985), para. 26.

2. *Decision No. 466 (27 June 2012): BV* v. *International Bank for Reconstruction and Development*[65]

Breach of memorandum of understanding—Binding nature of MOU on both staff and the organization—Staff rule 9.01, paragraph 4.12—Effect of the Organization's untimely compliance with MOU—Failure to justify breach—Discretion to reassign staff subject to pre-existing MOU—Payment of compensation for violation of right to fair treatment

The Applicant challenged: (i) the Bank's failure to reinstate him in a timely manner to his former position as required by a Memorandum of Understanding of 31 August 2009 ("MOU"); and (ii) the Bank's decision to reassign him until 1 May 2012. The Applicant had a career dispute with the Bank which resulted in his demotion; however, the dispute was resolved in his favor with the signing of the MOU. According to the terms of the agreement, management would re-instate the Applicant effective 1 September 2009. Due to an accident which resulted in restrictions on his mobility, the Applicant was unable to resume work immediately. He was placed on the Bank's short-term disability programme and temporarily assigned to another unit. The temporary assignment was extended and a proposal to convert the assignment to a permanent position was offered to the Applicant, which he rejected. Three Independent Medical Evaluations (IME) were conducted subsequently, first in November 2010 and then on 16 February 2011 and 8 August 2011. These confirmed that the Applicant was fit to return to his original position on a full-time basis, although he would be wheelchair-bound. One of the IMEs recommended that the Bank "accommodate his working environment to fit with what his functional capacity can meet". However, the Applicant's supervisor continued to press for a permanent reassignment of the Applicant, while he sought to be reinstated to his former position. The Applicant was reassigned permanently pursuant to staff rule 5.01, paragraph 2.04, and on 8 June 2011, the Bank posted a vacancy announcement for the Applicant's former position. The Applicant initially attempted to resolve the dispute over his right to his former position informally. When mediation attempts did not prove successful, the Applicant filed an Application with the Tribunal on 28 October 2011. The parties sought the extension of applicable deadlines for filing pleadings to explore possibilities of settling the case. On 29 April 2012, shortly before the end of written proceedings before the Tribunal, the Applicant's manager informed him that he was being reinstated to his former position.

Before the Tribunal, the Bank contended that the Application was inadmissible because his claims were moot. According to the Bank, it had employed a cautious approach to ensure that reasonable accommodations had been made to take into account the Applicant's mobility restrictions and ensure his workplace safety. Additionally, its decision to reassign the Applicant permanently was guided by the work program needs including the urgent business need for the Applicant's former position to be filled. The Applicant, on the other hand, argued that the last-minute decision to reinstate him neither rendered the case moot nor cured the damage inflicted on him.

The Tribunal found that as the Bank had eventually complied with its main obligations under the MOU to reinstate the Applicant, the contested decisions (i.e. failure to

[65] The judgment was rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Monica Pinto (Vice-President), Jan Paulsson, Francis M. Ssekandi, and Ahmed El-Kosheri.

reinstate the Applicant and the decision to reassign him) were moot. Nevertheless, the facts surrounding the belated implementation of the main term of the MOU and the earlier reassignment of the Applicant to a different unit necessitated a review of the Bank's actions to ascertain whether they resulted in unfair treatment of the Applicant for which he may deserve compensation. The Tribunal recalled past decisions in which it upheld the Bank's discretion to reassign staff on the basis of its evolving business needs but noted that the binding nature of MOUs is recognized in staff rule 9.01, paragraph 4.12 which provides that "[a] signed MOU represents a binding commitment for the parties." In addition the Tribunal's jurisprudence had recognised the binding nature of settlements.[66]

The Tribunal further noted that the Bank should have examined, prior to reassignment of the staff member, whether there was a specific agreement that would prevent such a reassignment. The Tribunal held that such an agreement existed in the present case and the Bank had an obligation to observe the term of the MOU which provided that the Applicant would be reinstated effective September 1, 2009. Any amendment of the terms of the MOU, and particularly the term relating to the Applicant's reinstatement, required the assent of the Applicant especially because such terms constituted an essential condition in the employment relationship of the Applicant with the Bank.

The Tribunal reviewed the Bank's explanations for its breach of the MOU, but noted that there was no sound justification for its actions. For these reasons, the Applicant's right to fair treatment was held to have been violated by the Bank's failure to implement the MOU in a timely fashion causing prejudice to the Applicant. The Bank was ordered to pay the Applicant compensation in the amount of three months' salary net of taxes, and attorney fees.

E. Decision of the Administrative Tribunal of the International Monetary Fund[67]

Judgment No. 2012–1 (6 March 2012): Sachdev v. *International Monetary Fund*

Abuse of discretion—Standard of review in the exercise of managerial discretion—Abolition of position and subsequent separation of staff member consistent with internal law and fair and reasonable procedures—Notice—Equal treatment—Failure to fulfil obligation of fundamental fairness—Compensation—Legal fees and costs

[66] See for example, *Eugene Nyambal (No. 2)* v. *International Bank for Reconstruction and Development and International Finance Coorporation,* Decision No. 395 (25 March 2009), para. 21 and *Sylvie Brebion* v. *International Bank for Reconstruction and Development*, Decision No. 159 (11 April 1997), paras. 29–30.

[67] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is competent to pass judgment upon any application: a) by a member of the staff challenging the legality of an administrative act adversely affecting him; or b) by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant. For more information on the Administrative Tribunal of the International Monetary Fund and the full texts of its judgments, see http://www.imf.org/external/imfat/index.htm (accessed on 31 December 2012).

The Applicant challenged the Fund's decision (1) not to select her for the position of Assistant Secretary for Conferences in the Bank-Fund Conferences Office ("BFCO") at Grade B2, and, subsequently, (2) to abolish her position as Advisor for Conferences in the BFCO at Grade B1 as part of the 2008 Fund-wide downsizing exercise. As to the first decision, the Applicant contended that her non-selection violated her legitimate expectations and was not taken consistently with Fund rules and fair procedures. As to the second decision, the Applicant alleged that the abolition of her post was pretextual and improperly motivated to deprive her of her Fund employment. She additionally contended that the Fund failed: (a) to give her reasonable notice of the abolition decision; (b) to afford her fair and equal treatment in denying her requests to defer the effective date of the position abolition, to provide her with increased separation benefits, and to exhaust accrued annual leave; and (c) to meet its obligations under general administrative order (GAO) No. 16, rev. 6, section 12.02 (Job Search and Retraining) to assist her in finding an alternative position. As relief, the Applicant sought to be returned to service with the Fund in a B-level or A14/15 position with retroactive pay. She also sought substantial monetary compensation for loss of career opportunities, as well as compensation for unused annual leave. She additionally requested legal fees and costs in accordance with article XIV, section 4, of the Statute of the Tribunal.

The Tribunal first addressed the standard of review in cases involving the individual decisions taken in the exercise of managerial discretion. Referring to the Commentary on its Statute, as well as its past decisions, the Tribunal recognized that selection of a staff member to fill a vacancy, like other decisions that involve weighing the suitability of a staff member to perform particular functions within the organization was the province of the decision-making officials. Accordingly, the Tribunal could not substitute its own assessment of candidates' merits for that of competent Fund officials. At the same time, the Tribunal recognized that the Fund was bound to observe the elements of its internal law governing selection decisions, as well as applicable principles of international administrative law.

Applying this standard of review to the present case, and after a careful review of the internal law applicable to the case, as well as the relevant principles of international administrative law, the Tribunal rejected the Applicant's specific challenges to the fairness of the selection procedures. It concluded that the Applicant was not wrongfully denied appointment as Assistant Secretary for Conference Services in the BFCO or that her position as Advisor for Conference Services was wrongfully abolished as part of the Fund's downsizing in 2008. Accordingly, the Tribunal determined that the Applicant was not entitled to rescission of either of those decisions.

Nevertheless, the Tribunal reached the conclusion that the Applicant's non-selection for the Assistant Secretary position was marked by serious failures of due process, and that these failures were compounded in the ensuing year, after Applicant's own position was abolished, by a serious breach of the Fund's obligations GAO No. 16, Rev. 6, section 12.02, to assist the Applicant in seeking reassignment to a suitable position. In the Tribunal's view, the Fund's actions toward the Applicant fell significantly short of the fair treatment to which staff members are entitled. In particular, the Tribunals findings revealed an accumulation of failures of requisite managerial pro-activeness, which in the Tribunal's view evidenced a degree of indifference to the Applicant that was inconsistent with the obligation of fundamental fairness owed by the Fund to its staff members.

On the issue of compensation, the Tribunal noted that in its prior decisions it had interpreted its remedial powers to include the "authority to reject an Application challenging the legality of an individual decision while finding the Fund nevertheless to be liable in part, as by procedural irregularity in reaching an otherwise sustainable decision".[68] Applying this interpretation to the present case, and taking into account the Fund's failure to proactively assist the Applicant in seeking reassignment following the abolition of her Advisor position, the Tribunal concluded that the Applicant was entitled to compensation in the amount of USD 75,000. The Tribunal also decided to award the Applicant seventy-five percent of her legal fees and costs incurred.

[68] *Ms. "C", Applicant* v. *International Monetary Fund,* Judgment No. 1997–1, 22 August 1997, para. 44.

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)

1. Privileges and immunities

(*a*) Note to the Ministry of Foreign Affairs of [State] regarding the introduction of a weight limitation on United Nations diplomatic bags used by the United Nations Development Programme

Section 10 of the Convention on the Privileges and Immunities of the United Nations, 1946—Vienna Convention on Diplomatic Relations, 1961, places no limitation on the weight or the size of diplomatic bags—Unilateral imposition of a weight limit is not consistent with the obligations under both conventions—Measure constitutes an additional hardship for the Organization and, thus, is inconsistent with Article 105 of the United Nations Charter

The Legal Counsel of the United Nations presents her compliments to the Ministry of Foreign Affairs of [State] and has the honour to refer to the latter's Note Verbale of [date] addressed to international organizations accredited to [State] regarding the imposition of a 30 kilograms weight limitation on diplomatic bags. The Legal Counsel has the further honour to refer to the exchanges between the United Nations Development Programme (UNDP) and the Ministry on this issue.

In this regard the Legal Counsel wishes to express her concern on the introduction of a weight limitation on United Nations diplomatic bags used by UNDP and to reiterate the relevant provisions of the applicable legal instruments as follows.

[State] is a party to the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (hereinafter the "General Convention"),[**] to which [State] is a party since [date] without any reservations. UNDP is a subsidiary organ of the United Nations and, therefore, an integral part of the Organization.

According to section 10 of the General Convention, "[t]he United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in

[*] This chapter contains legal opinions and other similar legal memoranda and documents.

[**] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

bags, which shall have the same immunities and privileges as diplomatic couriers and bags." The status of diplomatic bags is regulated by article 27 of the Vienna Convention on Diplomatic Relations, 1961 (hereinafter the "Vienna Convention"),[*] which provides, *inter alia,* as follows:

> "3. The diplomatic bag shall not be opened or detained.
>
> 4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use."

In light of the above, it is clear that the Convention places no limitation on the weight or the size of diplomatic bags and a unilateral imposition by the Government of [State] of a weight limit is not consistent with the General Convention or the Vienna Convention and, thus, is contrary to the Government's obligations under these instruments.

Moreover, such a measure constitutes an additional hardship for the Organization and, thus, is inconsistent with Article 105 of the United Nations Charter, which provides that "the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes". The United Nations Conference on International Organization at San Francisco in 1945, in recommending that Article 105 be included in the Charter stated as follows:

> "But if there is one certain principle it is that no Member State may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens". (Report of Commission IV on Judicial Organization, UNCIO, Documents, Volume 13, p. 705.)

The Legal Counsel wishes to assure the Ministry that the United Nations uses the diplomatic pouch for official purposes and has internal guidelines in place which regulate how the pouch may be used.

The Legal Counsel would therefore be grateful if the Ministry were to ensure that the proposed weight limit not be applied to the United Nations diplomatic bag in [State].

[. . .]

3 April 2012

(*b*) Inter-office memorandum to the United Nations Resident and Humanitarian Coordinator and United Nations Development Programme (UNDP) Resident Representative of [State] concerning the non-applicability of [State] Labour Laws to the United Nations

Immunity of the United Nations and its officials from jurisdiction of Member States—Articles 100, 101 and 105 of the Charter of the United Nations—The Organization may not receive instructions on how to manage its staff or subject its officials to the local labour laws—Sections 2 and 18 of the Convention on the Privileges and Immunities of the United Nations, 1946—General Assembly resolution 76 (I) of 7 December 1946, approved the granting of the privileges and immunities referred to in articles V and VII of the General Convention to "all

[*] United Nations, *Treaty Series*, vol. 500, p. 95.

MEMBERS OF THE STAFF OF THE UNITED NATIONS, WITH THE EXCEPTION OF THOSE WHO ARE RECRUITED LOCALLY AND ASSIGNED TO HOURLY RATES"

1. This is with reference to your memorandum of [date] to the Legal Counsel, in which you requested the Office of Legal Affairs' (OLA) guidance with respect to the Note Verbale of [State] requiring international organizations, including the United Nations, to adapt their staff contracts to the [date] Labour Law of [State]. You also refer to a number of claims initiated by the United Nations staff members against the United Nations in [State] courts.

2. In this regard we suggest sending a Note Verbale to the Ministry of Foreign Affairs of [State] explaining to the Ministry that the above-mentioned request is not consistent with the status of the United Nations and its officials as provided for in the Charter of the United Nations and in the Convention on the Privileges and Immunities of the United Nations, 1946.[*] Please find enclosed a draft Note Verbale to that effect.

[Enclosure]

The Resident and Humanitarian Coordinator of the United Nations presents his compliments to the Ministry of Foreign Affairs of [State] and has the honour to refer to the latter's Note Verbale [number][date], which requests international organizations to "adapt contracts of their [Nationality] and resident foreign staff members to provisions of the [State] Labour Law". The Note Verbale further states that "any agreement that contradicts provisions of the [State] Labour Law, does not prevent them from claiming for their rights based on provisions of [State] law". The Resident and Humanitarian Coordinator has the further honour to refer to the Ministry's Note Verbale of [date] with "a summon to appear before [City]'s court of labour for the attendance of the [date] hearing".

In this regard, the Resident and Humanitarian Coordinator wishes to express his concern with the above-mentioned requests as they are not consistent with the status of the United Nations and its officials and is inconsistent with the legal obligations of [State] under the Charter of United Nations, the Convention on the Privileges and Immunities of the United Nations, 1946 (the "General Convention") and other applicable instruments.

The Resident and Humanitarian Coordinator wishes to reiterate the relevant provisions of the applicable legal instruments as follows.

Article 100 and 101 of the Charter of the United Nations provide as follows:

"*Article 100*

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly."

[*] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

Thus the Secretary-General of the United Nations, with assistance of the relevant departments and agencies, is the only authority in the Organization responsible for the appointment, dismissal and management of the United Nations staff in accordance with regulations established by the General Assembly. The Organization may not receive instructions on how to manage its staff or subject its officials to the local labour laws. Disputes between United Nations staff members and the Organization are subject to the internal system of administration of justice of the Organization and cannot be submitted to the national courts of Member States.

The immunity of the United Nations and its officials from jurisdiction of Member States is based on the following.

Article 105 of the Charter of the United Nations provides in its paragraph 1 that "the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes". Pursuant to paragraph 2 of that Article, officials of the Organization enjoy privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

The above provisions are confirmed and further detailed in the General Convention, to which [State] has been a party since [date], without any reservation.

In accordance with section 2 of the General Convention "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 any particular case it has expressly waived its immunity". According to section 18 (a) of the General Convention, "[o]fficials of the United Nations shall: (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity".

It is important to note that by resolution 76 (I) of 7 December 1946, the General Assembly approved the granting of the privileges and immunities referred to in articles V and VII of the General Convention to "all members of the staff of the United Nations, with the exception of those who are recruited locally and assigned to hourly rates." Therefore, all staff members of the United Nations, regardless of nationality, residence, place of recruitment or rank, are considered officials for the purposes of the General Convention with the sole exception of those who are *both* recruited locally *and* assigned to hourly rates. As a result, the exemption, under article V, section 18 of the General Convention, from legal process applies to United Nations staff members, independent of their nationality, provided they are not assigned to hourly rates.

Under section 34 of the General Convention, the [State] has an obligation to be "in a position under its own law to give effect to the terms of this Convention".

In this regard the Resident and Humanitarian Coordinator wishes to note that the same legal principles apply to the status of the Specialized and related Agencies and their personnel in [State].

Accordingly, the Resident and Humanitarian Coordinator respectfully requests the Government of [State] and its competent authorities to take all necessary steps to ensure full compliance with its obligations under the Charter of the United Nations, the General Convention and other applicable legal instruments and ensure that the [State] Labour Law is not applied to the United Nations and its officials in [State].

The Resident and Humanitarian Coordinator wishes to reiterate that the United Nations is expressly maintaining its immunity from legal process with respect to the proceedings instituted against it in the [City]'s labour court. In particular, the Resident and Humanitarian Coordinator respectfully requests the competent authorities of [State] to seek dismissal of the case in accordance with the Government's obligations under international law.

[. . .]

April 2012

(*c*) Note to the Ministry of Foreign Affairs of [State A] concerning a request to [State B] staff members of the United Nations to leave the country or face possible detention

Requests to leave the country addressed to the staff members of the United Nations are inconsistent with the fundamental principles of the international civil service—Articles 100 and 105 of the Charter of the United Nations—Possible detention of staff members would be contrary to the immunity of the United Nations and its officials from jurisdiction of Member States—Section 18 of the Convention on the Privileges and Immunities of the United Nations, 1946

The Resident and Humanitarian Coordinator of the United Nations presents his compliments to the Ministry of Foreign Affairs of [State A] and has the honour to refer to an announcement by the [security services in State A] in [City] during a meeting attended by WFP and other United Nations Funds and Programmes as well as by [United Nations Mission] that all [State B] staff of the United Nations must leave [City] by 2 May, 2012 or face possible detention. In this regard the Resident and Humanitarian Coordinator has the further honour to refer to the WFP Note Verbale on this issue addressed to the Ministry of Foreign Affairs, dated 1 May 2012.

The Resident and Humanitarian Coordinator wishes to express his serious concern with the above-mentioned request as it is not consistent with the status of the United Nations and its officials. These measures, if implemented, would seriously impede activities of the United Nations in [State A] and put at risk the implementation of mandates given by its decision-making bodies.

In this regard, the Resident and Humanitarian Coordinator would like to reiterate the relevant provisions of the applicable legal instruments as follows.

In accordance with Article 100 of the Charter of United Nations, "[i]n the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization". This obligation of the United Nations staff corresponds to the obligation of each Member of the United Nations "to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities".

Therefore, any requests to leave the country addressed to the staff members of the United Nations are inconsistent with the fundamental principles of the international civil service enshrined in the Charter of the United Nations.

Moreover, such requests are at variance with agreements of [State A] with the United Nations Funds and Programmes, such as the Basic Agreement between the United Nations/FAO on behalf of WFP and [State A] concerning Assistance from the World Food Programme, the Agreement between the United Nations Development Programme and [State A] (hereinafter the "SBAA") as well as the [status of mission agreement].

According to the [status of mission agreement], "[t]he Government undertakes to respect the exclusively international nature of [the United Nations Mission]" (paragraph 7) and "[t]he Joint Special Representative and members of [the United Nations Mission] shall, whenever so required by the Joint Special Representative, have the right to enter into, reside in and depart from [State A]" (paragraph 34).

The SBAA provides in its article X that "[t]he Government shall undertake any measures which may be necessary to exempt the UNDP, its Executing Agencies, their experts and other persons performing services on their behalf from regulations or other legal provisions which may interfere with operations under this Agreement, and shall grant them other facilities as may be necessary for the speedy and efficient execution of UNDP assistance. It shall, in particular, grant them the following rights and facilities:

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

(*b*) Prompt issuance without cost of necessary visas, licenses or permits;

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

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

With respect to the possible detention of United Nations staff members of [State B] nationality, who do not leave the country as requested, the Resident and Humanitarian Coordinator wishes to emphasize that such actions would be contrary to the immunity of the United Nations and its officials from jurisdiction of Member States.

This immunity is rooted in Article 105 of the Charter of the United Nations, which provides in its paragraph 1 that "the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes". Pursuant to paragraph 2 of that Article, officials of the Organization enjoy privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

The above provisions are confirmed and further detailed in the Convention on the Privileges and Immunities of the United Nations, 1946 (hereinafter the "General Convention"),[*] to which [State A] has been a party since [date], without any reservation. According to section 18 (a) of the General Convention, "[o]fficials of the United Nations shall: (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity".

[*] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

It is important to note that resolution 76 (I) of 7 December 1946, the General Assembly approved the granting of the privileges and immunities referred to in articles V and VII of the General Convention to "all members of the staff of the United Nations, with the exception of those who are recruited locally and assigned to hourly rates." Therefore, all staff members of the United Nations, regardless of nationality, residence, place of recruitment or rank, are considered officials for the purposes of the General Convention with the sole exception of those who are *both* recruited locally *and* assigned to hourly rates.

Under section 34 of the General Convention, [State A] has an obligation to be "in a position under its own law to give effect to the terms of this Convention".

All the above-mentioned norms should be read in light of the fundamental principle formulated by the United Nations Conference on International Organization at San Francisco in 1945 as follows:

> "But if there is one certain principle it is that no Member State may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other." (Report of Commission IV on Judicial Organization, UNCIO, Documents, Volume 13, p. 705).

Therefore, the Resident and Humanitarian Coordinator respectfully requests the Government of [State A] and its competent authorities to take all necessary steps to ensure full compliance with its obligations under applicable legal instruments and ensure that United Nations staff members of [State B] nationality are not impeded in the performance of their functions.

The Resident and Humanitarian Coordinator further requests that any procedural issue that might arise in connection with work permits or any other documents necessary for those United Nations staff members, who acquired [State B] nationality, are resolved in accordance with above-mentioned obligations of [State A].

[. . .]

May 2012

(*d*) Note to the Minister of Foreign Affairs of [State] to the United Nations concerning certain labour claims filed against the United Nations Logistics Base in [City] in the Court of [City] by five former individual contractors

Request to Government of [State] to ensure full respect for privileges and immunities of the United Nations—Paragraph 1, Article 105 of the Charter—Article II, section 2 of the Convention on the Privileges and Immunities of the United Nations, 1946—Jurisdictional immunities of states and privileges and immunities of international organizations have a different nature and origin—"Commercial activity" exception is not applicable with respect to the United Nations—Disputes may be subject to an appropriate mode of settlement by the Organization

The Legal Counsel of the United Nations presents her compliments to the Permanent Representative of [State] to the United Nations and has the honour to request the Permanent Representative to transmit the enclosed Note Verbale to the Ministry of Foreign Affairs concerning certain proceedings before the Court of [City], Labour Section, regard-

ing certain labour claims filed by former Individual Contractors of the United Nations Logistics Base in [City].

The Legal Counsel would also be grateful for the assistance of the Permanent Representative in facilitating the resolution of this matter consistent with the status of the United Nations under the applicable international agreements.

The Legal Counsel of the United Nations avails herself of this opportunity to renew to the Permanent Representative of [State] to the United Nations the assurances of her highest consideration.

[Enclosure]

The Legal Counsel of the United Nations presents her compliments to the Minister of Foreign Affairs of [State] and has the honour to refer to the summonses relating to certain labour claims filed against the United Nations Logistics Base in [City] (UNLB) in the Labour Section of the Court of [City] by five former Individual Contractors of UNLB for a total amount of approximately [amount]. The summonses were received by UNLB on [date] and [date] calling upon representatives of UNLB to attend the hearings relating to the above mentioned proceedings scheduled on [date] and [date].

With the present Note Verbale, the Legal Counsel returns the summonses received and respectfully requests the Government of [State] to promptly take all necessary steps to ensure full respect for the privileges and immunities of the United Nations in [State], in accordance with its obligations under international law. In this regard, the Legal Counsel wishes to recall the applicable legal framework and the corresponding legal obligations of [State] as follows.

The United Nations is an international intergovernmental organization established pursuant to the Charter of the United Nations (hereinafter referred to as "the United Nations Charter"), a multilateral treaty signed on 26 June 1945. As an international organization, the United Nations has been accorded certain privileges and immunities which are necessary for the fulfilment of the purposes of the Organization. Pursuant to Paragraph 1 of Article 105 of the United Nations Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes."

The United Nations enjoys the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations, 1946 (hereinafter the "General Convention")[*] to which [State] has been a party since [date], without reservation. Pursuant to article II, section 2 of the General Convention, "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 any particular case, it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."

The Legal Counsel further wishes to recall that the United Nations has not waived its immunity from legal process in respect of any legal proceedings in, or before the courts of [State] and is expressly maintaining its immunity in respect of the above-mentioned proceedings currently before the courts of [State]. Pursuant to final article, section 34 of

[*] United Nations, *Treaty Series,* vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

the General Convention, the Government of [State] undertook an obligation to be "in a position under its own law to give effect to the terms of this Convention."

Any interpretation of the provisions of the General Convention must be carried out within the spirit of the underlying principles of the United Nations Charter, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Moreover, in accordance with article 26 of the Vienna Convention on the Law of Treaties, 1969[*] (hereinafter "the Vienna Convention"), "every treaty in force is binding upon the parties to it and must be performed by them in good faith."

The Legal Counsel notes further that, in their submissions to the Court of [City], the claimants appear to be arguing a concept of immunity generally applied to sovereign states.

The Legal Counsel wishes to point out that the concepts of jurisdictional immunities of states and the privileges and immunities of international organizations have a different nature and origin. The jurisdictional immunities of states are a part of customary international law that has evolved through the years and recently was codified in the United Nations Convention on Jurisdictional Immunities of States and their Property, 2004.[**] Under customary international law, when a state acts as a private person in a commercial context (*jure gestionis*), it is not immune from the jurisdiction of the state in which it is acting in that capacity. In such a case, since the state is acting outside of its role as a sovereign power, the immunity does not apply.

Unlike the case with sovereign states, the privileges and immunities of the United Nations are of a treaty law nature and, as explained above, originated in the United Nations Charter and the General Convention. The exception to state immunity in situations where the state is undertaking commercial activities is not provided for under the United Nations Charter or the General Convention with respect to the United Nations. Instead, pursuant to article VIII, section 29 of the General Convention, the Organization shall make provisions for appropriate modes of settlement of, *inter alia*, "disputes arising out of contracts or other disputes of a private law nature to which the United Nations is a party." Accordingly, there is no "commercial activity" exception under the General Convention that would be applicable with respect to the United Nations.

In this regard, the Legal Counsel wishes to note that the claimants in the above proceedings are therefore not without recourse. In accordance with article VIII, section 29 of the General Convention, disputes arising out of or in connection with the contracts may be subject to an appropriate mode of settlement by the Organization.

Based on the foregoing, the Legal Counsel respectfully requests the Government of [State] to promptly take all necessary steps to ensure full respect for the privileges and immunities of the United Nations in [State], in accordance with its obligations under international law. As a courtesy, a copy of this Note Verbale will also be sent to the Labour Section of the Court of [State].

[. . .]

20 November 2012

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[*] *Ibid.*, vol. 1155, p. 331.

[**] General Assembly resolution 59/38 of 2 December 2004. Not yet in force.

2. Procedural and institutional issues

(*a*) Note to the Permanent Mission of [State] to the United Nations concerning the official and working languages of the United Nations

Use of official and working languages of the United Nations set out in paragraph 1 of the annex to General Assembly resolution 2(I) of 1 February 1946—Correspondence Manual confirms that English and French are the languages to be used for communications between the Secretariat and Permanent Missions or Governments

The United Nations presents its compliments to the Permanent Mission of [State] to the United Nations and has the honour to refer to its most recent Note Verbale of [date] concerning the official and working languages of the United Nations. The United Nations would also like to refer to its Note Verbales of [date] and [date] respectively, which are in response to previous communications from the Permanent Mission of [State] on this subject.*

The United Nations would like to recall that it has previously indicated to the Permanent Mission that the use of the official and working languages of the United Nations is set out in General Assembly resolution 2(I) of 1 February 1946. Paragraph 1 of the annex to that resolution provides that, "[i]n all organs of the United Nations, other than the International Court of Justice, Chinese, French, English, Russian and Spanish shall be the official languages, and English and French the working languages of the United Nations."** Paragraph 8 of the annex to that resolution provides that, all resolutions and other important documents of United Nations organs shall be made available in the official languages.

The United Nations would also like to recall that communications between the United Nations Secretariat, its Member States, non-Member States and United Nations system organizations are not documents of United Nations organs within the meaning of General Assembly resolution 2(I) of 1 February 1946. Such communications are regulated by the United Nations Correspondence Manual (ST/DCS/4/Rev.1). The Correspondence Manual confirms that English and French are the languages to be used for communications between the Secretariat and Permanent Missions or Governments. In particular, exhibit 19 confirms English as the language to be used by the Secretariat in communications with the Permanent Mission of [State]. This is also provided for in ST/SG/SER.A/301 ("the Blue Book").

Consequently, communications that are exchanged between the United Nations Secretariat and a Permanent Mission, or any other United Nations system organization or Government, remain subject to the Correspondence Manual.

By its most recent Note Verbale of [date], the Permanent Mission of [State] makes the point that the communications exchanged between the Permanent Mission and the Special Procedures Branch of the Human Rights Council are "important documents" within the

* Not reproduced herein.

** Pursuant to resolution 3190 (XXVIII) of 18 December 1973, the General Assembly decided to include Arabic among the official and the working languages of the General Assembly and its Main Committees.

meaning of paragraph 8 of the annex to resolution 2(I) of 1 February 1946. Accordingly, the Permanent Mission requests that these documents be translated into the official languages of the United Nations.

However, the United Nations has been informed by the Office of the High Commissioner for Human Rights that when the Secretariat transmits a communication from the Special Procedures mechanism to a Permanent Mission, such a communication is not circulated as an official document of the Human Rights Council. As these communications are not documents of United Nations organs they do not fall within the purview of General Assembly resolution 2(I). They remain communications between a Member State and the Secretariat and as explained above, are subject to the provisions of the Correspondence Manual.

[. . .]

9 February 2012

(*b*) Inter-office memorandum to the Officer-in-Charge, Department of Management, concerning the possible conflict of interest arising from concurrent service as member of the Independent Audit Advisory Committee (IAAC), [Function] of the Panel of External Auditors (the Panel), and external auditor for the World Food Programme (WFP)

Legal framework governing the IAAC and the Panel—Restrictions for eligibility for IAAC membership—Concurrent service as a member of the IAAC and [Function] of the Panel of External Auditors does not, in itself, raise a conflict of interest—Concurrent service as a member of the IAAC and as external auditor for a programme of the United Nations, i.e., WFP, may give rise to conflict of interest—Should IAAC engage in the oversight of WFP activities, recusation suggested

1. I refer to the memorandum of 7 February 2012 from [Name], then Under-Secretary-General for Management, on the above matter. [Name]'s memorandum notes that [Name], [Title], was elected as [Function] of the Panel in [date], whilst at the same time, continuing to serve as a member of the IAAC. The Department of Management (DM) seeks the Office of Legal Affairs' (OLA) views as to whether [Name]'s membership in the IAAC creates any conflicts of interest with his concurrent [function] of the Panel.

I. [Name]'s appointments in the IAAC and the Panel

A. The IAAC

2. [Name] was appointed as a member of the IAAC by the General Assembly, in its decision [reference number, date] for a three-year term beginning on [date]. In accordance with paragraph 7 of the Terms of Reference, attached as annex I to General Assembly resolution 61/275, IAAC members may be reappointed for a second and final term of an additional three years. Thus, [Name]'s current term is scheduled to expire on [date], at which point he would be eligible to be reappointed until [date].

B. The Panel

3. There is no formal selection process for Panel members. Rather, external auditors of the United Nations, the specialized agencies and the International Atomic Energy Agency (IAEA) automatically become members of the Panel. [Name] has become a member, and subsequently the [Function], of the Panel, as a result of his status as external auditor to the International Maritime Organization (IMO, until [date]), World Health Organization (WHO, until [date]), United Nations World Tourism Organization (UNWTO, until [date]) and the World Food Programme (WFP, until [date]).

II. The legal framework governing the IAAC and the Panel

A. The IAAC

4. The IAAC was established by the General Assembly "to assist the Assembly in fulfilling its oversight responsibilities" (resolution 60/248 of 23 December 2005, part XIII, paragraph 4). The jurisdiction of IAAC legally extends, strictly speaking, to the entire Organization, including the separately administered funds and programmes. As an operational matter however, we understand that the IAAC has so far limited its activities to the Secretariat only.

5. With a view to ensuring the IAAC's independence, the General Assembly placed certain restrictions on eligibility for its membership. In particular, pursuant to paragraph 10 of the Criteria for Membership (the Criteria), IAAC members "shall be independent of the Board of Auditors, the Joint Inspection Unit and the Secretariat and shall not hold any position or engage in any activity that could impair their independence from the Secretariat . . . in fact or perception". Therefore, an IAAC member may not be a member of the Board of Auditors (BoA), the Joint Inspection Unit (JIU) or the Secretariat. However, the Criteria are silent as to membership to the Panel.

B. The Panel

6. The Panel was established by the General Assembly to further "the co-ordination of the audits for which its members are responsible and to exchange information on methods and findings" (see resolution 1438 (XIV) of 5 December 1959). In addition, "[t]he Panel may submit to the executive heads of the participating organizations any observations or recommendations it may wish to make in relation to the accounts and financial procedures of the organizations concerned" (paragraph 2 of the annex to resolution 1438 (XIV)).

7. The Panel is composed of the members of the BoA and the appointed external auditors of the specialized agencies and the IAEA (paragraph 1 of the annex to resolution 1438 (XIV)).

III. Possible conflicts of interests arising from concurrent service as Member of the IAAC and the [Function] of the Panel

8. The Criteria provide that IAAC members shall be independent of the BoA, the JIU and the Secretariat. Our understanding is that [Name] is not a member of any of these entities. The Criteria also provide that IAAC members shall not hold any position or engage in any activity that could impair such independence in fact or perception. In this regard, we note that the General Assembly established the Panel as a *coordinating body*, without

jurisdiction over its members (the BoA and the external auditors of the specialized agencies and IAEA) and their audit responsibilities. Therefore, the Panel does not have any authority over the BoA and it follows that [Name]'s [function] of the Panel does not impair his independence. It appears therefore that [Name]'s concurrent service as a member of the IAAC and as the [Function] of the Panel does not, in itself, raise a conflict of interest.

IV. Possibility of a conflict of interest in serving concurrently as a member of the IAAC and as external auditor for a programme of the United Nations

9. We consider, however, that [Name] oversight functions over WFP may raise certain issues. As discussed in paragraph 3 above, [Name] is a current member of the Panel on account of his audit responsibilities over IMO, WHO, UNWTO and WFP. In this regard, while the IMO, WHO and UNWTO are specialized agencies, and are independent of the General Assembly, WFP is a United Nations programme, jointly administered by the United Nations and the Food and Agriculture Organization. To the extent that the General Assembly exercises oversight authority over WFP, [Name] service as an auditor of the WFP, while at the same time assisting the General Assembly in its oversight responsibilities as a member of the IAAC, may be perceived as giving rise to a conflict of interest.

V. [. . .]

VI. Conclusion and way forward

12. In conclusion, we consider that under the existing legal framework, [Name]'s concurrent service as member of the IAAC and [Function] of the Panel does not, in itself, raise conflict of interest issues. However, we consider that potential issues may be raised by [. . .] his membership of the IAAC while serving as external auditor of WFP [. . .]

(i) Regarding his concurrent service as a member of the IAAC and external auditor of WFP, we understand that as an operational matter the IAAC has limited its jurisdiction to the Secretariat, and has so far not engaged in the oversight of funds and programmes including the WFP. Should the IAAC, during the period of [Name]'s membership and while he continues to serve as external auditor of WFP, engage in the oversight of WFP activities, we would recommend that [Name] take steps to avoid any potential conflicts of interest that may ensue, including by recusing himself from any such IAAC activities.

(ii) [. . .]

3 April 2012

(*c*) Inter-office memorandum to the Chief, Programme Planning and Partnerships Division, United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), concerning the use of ESCAP name and emblem on a conference and exhibition owned and produced by a private company

Acceptance of a *pro bono* contribution to the United Nations requires the approval of the Controller and the conclusion of a formal agreement—Names and emblems of the United Nations shall not be used without prior authorization

AND IS GENERALLY PROHIBITED WHEN INTENDED FOR COMMERCIAL PURPOSES—USE OF DOCUMENTS AND PUBLICATIONS MAY BE ALLOWED IF THE UNITED NATIONS PARTICIPATES IN ORGANIZING THE CONFERENCE OR PUBLISHES A PUBLICATION WITH AN OUTSIDE BODY—EXCEPTIONAL AUTHORIZATION TO BUSINESS SECTOR ENTITY DOES NOT APPLY TO THE USE OF THE UNITED NATIONS NAME AND EMBLEM

1. By the memorandum of [date], you have sought clearance from the Office of Legal Affairs (OLA), by [date], for the use of the name and emblem of ESCAP on promotional materials for an event to be organized by [Company], a family-owned business in the publishing and event organization sectors, with a focus on the energy industry. You have informed us that ESCAP will be organizing a sub-regional consultation meeting for South-East Asia as part of the preparatory road map towards the Asia-Pacific Energy Forum, to be convened at the ministerial level in [date]. We understand that ESCAP plans to organize this consultation meeting to coincide with the [Conference, place, date], an event organized by [Company]. You have further stated that [Company] has indicated that it is willing to make in-kind contributions to support the ESCAP sub-regional consultation meeting in [date], including the provision of a meeting room, related support services, such as catering and wireless internet, and free access to the exhibit and conference sessions organized during [Conference]. In return, ESCAP wishes to authorize the display of its logo and name in [Company]'s promotional materials under the category, "Supporting Organization". We understand that such promotional materials include [Conference] Preliminary Show Guide, invitation tickets, advertisements in various publications; and the websites of the [Conference], and of [Name] conference, which we understand is also being organized by [Company].

PROPOSED *PRO BONO* DONATION FROM [COMPANY]

2. Please note that provision of *pro bono* goods and services to the United Nations is governed by the Secretary-General's bulletin, ST/SGB/2006/5 of 22 March 2006, entitled "Acceptance of *pro bono* goods and services", a copy of which has been provided to you.* Pursuant to the United Nations Financial Regulations and Rules, the acceptance of a *pro bono* contribution shall require the approval of the Controller (see paragraph 10 of the annex to the ST/SGB). Another requirement as set forth in the ST/SGB is the conclusion of a formal agreement between the donor and the United Nations (see *ibid*., paragraph 18). Such an agreement would address, *inter alia*, responsibilities of the Parties, liabilities, insurance, and recognition to be provided to the donor.

3. In this respect, paragraphs 20 and 21 of the annex to ST/SGB/2006/5 provide as follows:

> "Recognition of *pro bono* contributions"
>
> "20. Entities making a *pro bono* contribution should be accorded appropriate acknowledgement or recognition by the recipient for the contribution.
>
> "21. The names and emblems of the United Nations and separately administered organs and programmes of the United Nations shall not be used without prior authorization. In accordance with the established policy, the use of the names and emblems of the United Nations and separately administered organs and programmes of the Unit-

* Not reproduced herein.

> ed Nations by the donor for commercial purposes, including advertisement, display on websites or use in other promotional material, is generally prohibited."

Therefore, while appropriate acknowledgement should be provided to [Company], pursuant to ST/SGB/2006/5, it would not be appropriate to display the ESCAP name and emblem by [Company] for commercial purposes, including on its promotional materials.

4. Pursuant to paragraph 18 of the annex to ST/SGB/2006/5, an initial draft of an agreement to be concluded with the donor should be prepared by ESCAP in consultation with OLA. We would be prepared to assist your Office with the preparation of the *pro bono* agreement with [Company], once additional information on the proposed donation is provided to us.

ST/AI/189/ADD.21

5. With respect to the use of the United Nations emblem on documents and publications, paragraph 25 of section V of Administrative Instruction ST/AI/189/Add.21, on "Use of the United Nations emblem on documents and publications", dated 15 January 1979, as amended by ST/AI/189/Add.21/Amend.1, dated 23 January 2008, provides as follows:

> "When the United Nations *participates in organizing* a conference or meeting convened by an outside body or when the United Nations jointly publishes a publication with an outside body/bodies, the emblem may be used, in combination with the name 'United Nations', if the emblems of other participating bodies are so used on the documents of the conference or meeting or on the publication jointly published with the outside body/bodies" (emphasis added and footnote 1 omitted).

6. Since the United Nations is not participating in the organization of the [Conference] exhibit and conference, in accordance with paragraph 25 of ST/AI/189/Add.21, it is not appropriate to use the ESCAP emblem (which is the United Nations emblem with the name and acronym of ESCAP placed next to the emblem) on the [Conference] Preliminary Show Guide, invitation tickets, advertisement and websites, as requested in your memorandum.

United Nations/Business Guidelines

7. In addition, you have mentioned in your memorandum that it is your understanding that the request to display the ESCAP emblem on promotional materials for the [Conference, place] and the [Name] conference "meets the necessary requirements and objectives outlined in the Guidelines on Cooperation between the United Nations and the Business Sector, with both parties benefitting from this opportunity." However, the "Guidelines on Cooperation between the United Nations and the Business Sector", issued on 20 November 2009 (hereinafter, the "Business Guidelines"), specify in paragraph 14 a) as follows:

> "Pursuant to General Assembly resolution 92(I), it has been a long-standing policy of the Secretary-General not to authorize the use of the United Nations Emblem by the Business Sector entity in an unmodified form, or to use the United Nations Emblem in a modified form, e.g., by placing the words 'United Nations' or 'UN' set above the emblem and the words 'We Believe' or 'Our Hope for Mankind' set below the emblem. However, an appropriate written communication could be provided to the Business Sector entity, acknowledging or recognizing its contribution to or collaboration with the United Nations."

The "exceptional" authorization that may be granted to a Business Sector entity, "on a case by case basis", pursuant to sections 14 (b) and (d) of the Business Guidelines, concern the use of the names and logos of other United Nations entities (defined in paragraph 14 of the Business Guidelines as the "Name and Emblem"), and such exceptional authorization does not apply to the use of the United Nations name and emblem (see paragraph 14 (a), quoted above). Since the ESCAP logo includes the United Nations name and emblem, the exceptions referred to in paragraphs 14 b) and d) are not applicable to the use of the ESCAP logo.

8. Consequently, we regret to inform you that OLA cannot grant authorization to [Company] to use the ESCAP name and logo for the purposes and in the manner you have outlined in your memorandum. However, as mentioned in paragraphs 2 and 3 of this memorandum, above, if [Company] makes an in-kind contribution to the United Nations, appropriate recognition should be given to [Company] in accordance with the policies set out in ST/SGB/2006/5 outlined in paragraph 3 above.

5 July 2012

(*d*) Note to the Secretary-General's Chef de cabinet concerning the participation of Palestine and the Holy See in two upcoming United Nations conferences

Formulas of participation of non-Member States in United Nations Conferences—"All State" formula—"Vienna" formula—Since General Assembly never treated Palestine as a State, Palestine cannot fall under "all States" formula—Holy See has always been treated as observer State—Under "Vienna formula", both Palestine and Holy See can participate as full members

1. This is further to our meeting today in which I discussed with you the participation of Palestine and the Holy See in two upcoming United Nations Conferences: the Tenth United Nations Conference on the Standardization of Geographical Names between 31 July to 9 August 2012 ("Geographical Names Conference") and the Review Conference for the Programme of Action on Small Arms and Light Weapons between 27 August to 7 September 2012 ("Small Arms Conference").

2. United Nations Conferences are organized according to a variety of formulas of participation. Non-Member States of the United Nations have been able to participate fully in these Conferences through two formulas of participation, the "all States" formula and the "Vienna" formula depending on which formula is decided upon by the General Assembly or the Economic and Social Council under whose auspices United Nations Conferences are usually convened. The Secretary-General in accordance with an understanding adopted by the General Assembly in 1973[*] follows the practice of the Assembly in implementing the "all States" clause. Thus, were the General Assembly to treat an entity differently to a State, the Secretary-General cannot treat that entity as falling within the "all States" formula, even if that entity has been admitted as a member State of a specialized agency. As the General Assembly has never treated Palestine as a State but as a *sui generis* entity, Palestine cannot fall under the "all States" formula and should continue to participate as

[*] *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 30* (A/9030).

an observer entity in such Conferences. The Holy See on the other hand has always been treated by the Assembly as an Observer State and thus falls under the "all States" formula.

3. Conferences convened under the "Vienna" formula provide for the participation of both Member States and States members of specialized agencies. The "Vienna" formula has long been understood to be a mechanism to provide for treaty or conference participation by an entity the status of which may be in dispute. Thus, if a mandate for a United Nations Conference includes States members of specialized agencies, the Secretary-General has arranged for participation on that basis without independently examining whether the General Assembly regards a member of a specialized agency as a State. The Secretary-General's review has been limited to whether, as a matter of fact, the entity had been admitted to the specialized agency on the basis that it is a State.

4. Palestine became a member State of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 23 November 2011. The specialized agencies of which the Holy See is a member include the World Intellectual Property Organization (WIPO), the Universal Postal Union (UPU) and the International Telecommunication Union (ITU).

5. As the Geographical Names Conference has previously been convened under the "Vienna" formula, we would recommend that Palestine and the Holy See as States members of specialized agencies both participate as full members. As the Small Arms Conference is to be convened under the "all States" formula, we would recommend that the Holy See participate as a full member and Palestine as an observer entity.

20 July 2012

(*e*) Inter-office memorandum to the High Representative for Disarmament Affairs, Office of Disarmament Affairs (ODA), concerning the provision of grants to external entities from funds in the Trust Fund for Global and Regional Disarmament Activities

United Nations Financial Regulations and Rules do not provide for grants from trust funds to outside entities to support the implementation of projects of such outside entities—Express mandate from the General Assembly required—Interim approaches include reliance on the Controller's delegation of authority or procurement contracts—Amendment of the Fund's Terms of Reference through submission of a request from ODA to the Controller, ST/SGB/188

1. I wish to refer to your memorandum dated 14 August 2012 as well as discussions between our Offices concerning the Trust Fund for Global and Regional Disarmament Activities ("Trust Fund") which is used to fund disarmament activities including those related to the Committee established pursuant to Security Council resolution 1540 (2004) and its group of experts.

2. You indicate in your memorandum that voluntary contributions have been received from Member States for purposes of the provision of grants to outside entities that would partner with the Office of Disarmament Affairs (ODA) in support of the implementation of resolution 1540 (2004). ODA accordingly wishes to use the Trust Fund to disburse these funds received from Member States to outside entities and seeks the Office of Legal Affairs'

(OLA) advice concerning obtaining the necessary General Assembly mandate to do so as well as an amendment to the Fund's Terms of Reference (TOR). Our views are as follows:

Background

3. We would like to recall that the Trust Fund was established on 1 June 1988 by a decision of the Secretary-General. According to a memorandum of 18 April 2001 from ODA, the TOR *inter alia* provides that, "within the various disarmament mandates given by the legislative bodies" the Trust Fund will "promote in-depth studies, organize expert discussions on priority disarmament questions." According to a memorandum from the Director, Office of Programme Planning, Budget and Accounts (United Nations) (OPPBA) dated 3 May 2001, an additional paragraph was added to the TOR which provides as follows:

> "To support initiatives and activities in the fields of small arms and light weapons, including post-conflict programmes related to disarmament, demobilization and reintegration of former combatants and weapons collection programmes."

4. In a memorandum to ODA of 14 March 2012 concerning a specific agreement whereby ODA would seek to provide grants to an outside entity, OLA stated as follows:

> " . . . as discussed at our . . . meeting, we are of the opinion that the delegation of authority from the Controller to your Office (as per memorandum of 1 August 2010) to issue grants in respect of certain trust funds may not provide a sufficient legal basis for ODA to provide grants to outside entities. In particular, please note that the Terms of Reference for the Trust Fund for Global and Regional Disarmament Activities . . . does not expressly authorize the provision of grants. However, we understand that on exceptional basis, and as was explained to us in our recent meeting, ODA has decided to rely on the Controller's delegation of authority in this case, since ODA considers the present undertaking to be urgently needed in order to fulfill its mandate. As we also discussed in our recent meeting, for future endeavors of this nature, OLA recommends that ODA seek approval or endorsement from the General Assembly to provide grants to outside entities."

5. In accordance with the United Nations financial regulation 4.14, trust funds must be administered in accordance with the United Nations Financial Regulations and Rules. In this regard, the TOR provide that the Fund will act "within the various disarmament mandates given by the legislative bodies." Since the provision of grants from trust funds to outside entities to support the implementation of projects of such outside entities is not provided for in the United Nations Financial Regulations and Rules, it would be necessary for ODA, on a long term basis, to obtain a mandate from the General Assembly that expressly allows it to provide grants to outside entities from ODA-administered trust funds. Pending ODA obtaining such a mandate, ODA will have to decide on approaches for utilizing the Fund to fulfill its purpose. These interim approaches are discussed in paragraph 6, below. In addition, there are several avenues available to ODA in order to obtain a mandate from the General Assembly, and these are outlined in paragraphs 7 to 10, below.

Grants to be given by ODA pending receipt of a mandate from the General Assembly

6. Until the above-referenced mandate is provided by the General Assembly, and in order to meet ODA's immediate requirements to give out grants to external entities,

we would note that ODA would have to rely on the Controller's delegation of authority, referred to above, on an *ad hoc* basis. Alternatively, and as we also discussed with representatives of your Office, ODA may wish to engage the services of qualified entities, such as NGOs, through procurement contracts, to carry out projects to fulfill the mandate of the Fund. Certainly, obtaining such services would clearly fall within the definition of procurement under the financial regulation 5.12 and the relevant United Nations Financial Rules thereunder. Such an approach, thus, would be fully consistent with the Financial Regulations and Rules.

Obtaining a mandate from the General Assembly

7. We note that in the provisional agenda of the General Assembly for the sixty-seventh session of the General Assembly, as contained in document A/67/100, there are a number of agenda items and sub agenda items under section G, "Disarmament". In our view, ODA is best placed to determine the agenda item or sub item under which the General Assembly may consider the matter and provide the necessary mandate.

8. While it is difficult for OLA to suggest specific language for inclusion in a draft resolution, it would be important that the resolution include a request to the Secretary-General to give grants from the Trust Fund to outside entities or permit the use of the Trust Fund to give grants to outside entities to support the implementation of their projects. Member States may also wish to specify specific limitations to the giving of such grants.

9. For purposes of informing the members of the General Assembly, ODA could consider inserting, in an appropriate report of the Secretary-General, information concerning the establishment of the Trust Fund, what it has achieved thus far and the need for the expansion of the Fund's mandate which requires General Assembly approval. It could then request the General Assembly at the present session to consider and adopt an expanded mandate which would allow ODA to amend the Fund's TOR in order to issue grants to outside entities. This process may take longer than the one outlined below.

10. Alternatively, once ODA identifies an appropriate agenda item, ODA could approach some Member States, for example donors States, and explain the current constraints on the use of the Trust Fund. ODA may wish to emphasize that the modifications being sought to the Fund's TOR would only be possible through the adoption of a resolution (or decision) providing a legal basis to provide grants to outside entities and seek their assistance.

Revision of the TOR

11. In paragraph 5 of your memorandum of 14 August 2012, ODA has proposed a text to be added to the TOR, concerning the provision of grants to external entities. Once the General Assembly has adopted a resolution (or decision) expressly allowing ODA to provide grants to outside entities from the Trust Fund and certain other trust funds managed by ODA, the authorization set forth in the resolution (or decision) would be reflected into the TOR of those trust funds by an amendment thereof. Such an amendment could be effected in the same manner that the TOR was amended in 2001, i.e., through the submission of a request for amendment from your Office to the Controller who, pursuant to the United Nations Financial Regulations and Secretary-General's bulletin ST/SGB/188 of

1 March 1982 on "Establishment and Management of Trust Funds", has the authority to approve the amendment of the TOR of the Trust Fund.

12. In this regard, there would be no objection if the proposed text of amendment to the TOR set forth in paragraph 5 of your memorandum was included in the report of the Secretary-General, referred to in paragraph 8 of this memorandum, above. If ODA decides to include the proposed text into the Secretary-General's report, we would recommend that the text be revised to clarify that the grants would be provided to support the implementation of the outside entities' projects, and that those projects would not be United Nations projects.

10 October 2012

3. Procurement

(*a*) Inter-office memorandum to the Director, Internal Audit Division, Office of Internal Oversight Services (OIOS), concerning the proper interpretation of financial rule 105.18(a): "not-to-exceed" provision in United Nations contracts

Financial rule 105.18(a) does not require a maximum contract price or a "not-to-exceed" price to be specified in every contract concluded by the Organization—"Not to exceed" amount can create unreasonable expectations for contractors or service providers—Specifying unit price without specifying the entire contract price would be sufficient to comply with rule 105.18(a)—Occasions when specifying a maximum contract price is essential

1. I refer to an e-mail message from the OIOS to the Office of Legal Affairs (OLA), dated 30 January 2012, requesting OLA's advice as to the proper interpretation of the financial rule 105.18(a). In essence, as stated in OIOS' e-mail message to OLA, your Office seeks our advice on whether, pursuant to that financial rule, "every contract [concluded by the Organization] must include a "not-to-exceed" provision (NTE) or other information to determine the contract price."

2. Financial rule 105.18(a) provides, as follows:

> "Written procurement contracts shall be used to formalize every procurement action with a monetary value exceeding specific thresholds established by the Under-Secretary-General for Management. Such arrangements shall, as appropriate, specify in detail:
>
> (i) The nature of the products or services being procured;
>
> (ii) The quantity being procured;
>
> (iii) The contract or unit price;
>
> (iv) The period covered;
>
> (v) Conditions to be fulfilled, including the United Nations general conditions of contract and implications for non-delivery;
>
> (vi) Terms of delivery and payment;
>
> (vii) Name and address of supplier."

3. In our view, the provisions of financial rule 105.18(a), quoted above, clearly do not require a maximum contract price or "not-to-exceed" amount to be specified in every contract concluded by the Organization. In fact, from recent commercial claims against the Organization that resulted in arbitration, we have seen that including a "not-to-exceed" amount in a contract can be detrimental to the legal interests of the Organization, as contractors have argued that such a "not-to-exceed" value gives them a right to expect payment of that amount, whether the Organization needs all of the specified goods or services or not. In an arbitration case between [Company] and the United Nations, [Company] claimed damages based on the remaining "not-to-exceed" amount balance, on the ground that the "not-to-exceed" amount was what it would have earned had the contract not been terminated. It advocated that the "not-to-exceed" amount was a guaranteed amount to be purchased by the United Nations, and the United Nations was obliged not to purchase from another vendor before it purchased up to the "not-to-exceed" amount. The tribunal rejected [Company]'s arguments, and the United Nations ultimately prevailed in the case. Nevertheless, given the great variety of contractors engaged by Organization from various jurisdictions, it is impossible to rule out the possibility that the inclusion of a "not-to-exceed" provision in every contract concluded by the Organization can result in similar disputes.

4. In this regard, financial rule 105.18(a)(iii) requires specification of the "contract [price] *or* unit price" (emphasis added). Thus, because financial rule 105.18(a)(iii) allows written contracts to specify either contract prices or unit prices, merely specifying unit prices without specifying the entire contract price would be sufficient to comply with financial rule 105.18(a) and, indeed, may be appropriate in many cases. In other cases, it may be appropriate to specify the maximum contract price together with unit prices.

5. Thus, not every contract concluded by the Organization needs to specify the maximum contract price. For example, if the Organization knows that it needs a particular product, such as vehicle spare parts, for its peacekeeping missions for the next three years, it is sufficient to include a unit-price or unit-price formula for the parts that will be paid during the three-year term of the contract. Since total vehicular spare part needs over the three-year period cannot be forecast, it makes less sense to include a "not-to-exceed" price in the contract that could set unreasonable expectations for the supplier. In such case, the "not-to-exceed" amount serves as an internal administrative ceiling on how much the Organization can spend under the contract, but it need not be included in the contract itself so long as unit prices for the parts are specified. Similarly, where services, such as investment advisory services for the United Nations Joint Staff Pension Fund, are needed for a discrete period of time, the hourly rate for the advisory services need only be specified in the contract. Since it cannot be forecast how much of the advisory services overall would be needed during the three-year period, again, it makes little sense to include a "not-to-exceed" price in the contract, as this could set unreasonable expectations for the service provider as to how much the Organization would pay under the contract.

6. There may be occasions when specifying a maximum contract price is essential. For example, when the Organization engages outside counsel for legal services to assist in arbitral proceedings, such outside counsel is asked to specify a cap on overall fees. This practice has saved the Organization substantial sums when the arbitral proceedings prove to be more complex or take significantly longer than the outside counsel anticipated in trying to bid for the services. Other cases in which such a maximum contract price make

sense include any number of "project" services, such as construction of premises, where the "not-to-exceed" amount being specified in the contract operates as a cost containment, liability limiting mechanism. So, for project based contracts, where overall cost containment is essential, including a "not-to-exceed" value in the contract is appropriate.

7. In light of the forgoing, it is OLA's view that the Procurement Division should exercise its judgment in deciding whether and when to include a "not-to-exceed" amount, or maximum contract price, in a contract concluded by the Organization, whether for purchase of goods, for the acquisition of services or for a combination thereof.

30 March 2012

(*b*) Inter-office memorandum to the Director, Procurement Division, Office of Central Support Services (OCSS), Department of Management, concerning contract documents included in written contracts concluded by the Organization

Including United Nations' solicitation documents and the contractor's proposal/bid in a contract as contract documents can often lead to differing interpretations of the parties' rights and obligations—More appropriate to extract relevant provisions amended as necessary and include such updated terms either in the main body of the contract or in a separate contract document—If necessary to reference documents, they should be listed separately and specify that documents are referred to only as aids in interpretation and do not create any rights or obligations

1. This memorandum concerns the issue of contract documents included in written contracts concluded by the Organization. Pursuant to financial rule 105.18(a), written contracts concluded by the Organization must specify, *inter alia*, the nature and quality of the products or services being procured; the contract or unit price; the period covered; and other relevant conditions, as appropriate. Such terms and conditions can be described either in the main body of the contract or in other documents which are specified as contract documents.

2. Contract documents are a set of documents that form a part of the agreement between the parties whether for purchase of goods, for the acquisition of services or for a combination thereof. These typically include the main body of the contract containing specific commercial and operational provisions relevant to the particular arrangement; appropriate United Nations General Conditions of Contract ("General Conditions"); and other documents necessary to accurately reflect various terms and conditions agreed upon by the parties during negotiations.

3. From recent commercial disputes involving the Organization that were referred to the Office of Legal Affairs for advice, we have seen that including the United Nations' solicitation documents (e.g., Request for Proposal (RFP), Invitation to Bid (ITB), Request for Quotation (RFQ)) and the contractor's proposal/bid in a contract as contract documents can often lead to differing interpretations of the parties' rights and obligations under the contract insofar as the former contains matters of administrative and not contractual nature, and the contractor's proposal/bid often contain provisions which are either contrary to the United Nations' privileges and immunities and/or contain the contractor's caveats

or proposed changes which contradict the United Nations' requirements as described in the United Nations' solicitation document. While it may be easier and faster in preparing contracts to simply bundle up all the documents relating to the procurement and include all of them in the contract as documents constituting the contract, such practice can be detrimental to the legal interests of the Organization. Accordingly, we would recommend against including, as contract documents, the United Nations' solicitation document and the contractor's proposal/bid in their entirety. In our view, it would be more appropriate to extract relevant commercial and operational provisions in the United Nations' solicitation document and the contractor's proposal/bid, amended as necessary to reflect the negotiated arrangement, and include such updated terms either in the main body of the contract or in a separate contract document. In our experience, this practice results in a clearer and more precise understanding of parties' rights and obligations under the contract.

4. In some cases, the Organization may have no choice other than to reference the United Nations' solicitation document and contractor's proposal/bid in order to successfully conclude a contract with a particular contractor. In such cases, the United Nations' solicitation document and the contractor's proposal/bid should be listed separately, and the contract should provide that these documents are referred to only as aids in interpretation of the rights and obligations of the parties under the contract but is not to be construed, for any purposes or under any circumstances, as creating any such rights or obligations. In those cases, the following provision could be included at the appropriate place in the contract:

> "The following documents are referred to in this Contract only as aids in interpretation of the rights and obligations of the Parties under the Contract but shall not be construed, for any purposes or under any circumstances, as creating any such rights or obligations: (a) United Nations [Request for Proposals (RFPS-xxxx) // Invitation to Bid (ITB-xxxx)] dated [date], [as amended by Amendment[s] No.xx dated [date [s]]]; and (b) the Contractor's technical and financial proposals in response to [RFPS-xxxx // ITB-xxxx], dated [date], [as clarified by (i) the United Nations' Request for Technical Clarification, dated [date]; and (ii) the Contractor's Clarification Responses for [RFPS-xxxx // ITB-xxxx], dated [date].] The documents referred to in this Article xx are not attached hereto but are known to, and in the possession of, the Parties."

5. [. . .]

6. [. . .]

30 March 2012

4. Liability and responsibility of the United Nations

Inter-office memorandum to the Deputy Controller, concerning the proposed *pro bono* contribution to the Office for the Coordination of Humanitarian Affairs (OCHA) by [Company]

Standard waiver and release clause waiving any claim or liability for any personal injury or damage to physical property suffered by the person while on the [Name]'s campus is incompatible with the United Nations financial regulation 3.11—Additional general liability insurance coverage naming the United Nations as an additional insured acceptable—Subject to Controller's

APPROVAL SINCE ACCEPTANCE OF A *PRO BONO* CONTRIBUTION CANNOT DIRECTLY OR INDIRECTLY INVOLVE ADDITIONAL FINANCIAL LIABILITY OF THE ORGANIZATION

1. This refers to a proposed *pro bono* donation of services from [Company] for leadership development services for OCHA. [. . .] Among the *pro bono* services to be provided by [Company] to OCHA under these arrangements is an upcoming workshop for Humanitarian Coordinators scheduled to take place at [workshop name] in [place] from [date]. The Office of Legal Affairs (OLA) is assisting OCHA with the negotiation of relevant *pro bono* donation agreements with [Company] and with its related Company, [Name], concerning the *pro bono* donation.

2. In this context, [Company] has provided its standard "[Name] Waiver and Release" which, according to [Company], has to be signed by anyone who stays on the campus of [Name]. The standard waiver and release form included a clause requiring the person signing the form to release [Company] and another Company affiliated with [Company] from any claim or liability for any personal injury or damage to physical property suffered by the person while on the [Name] campus (operated by [Company]), even if such injury or damage resulted from negligence by [Company] and/or the affiliated Company. We informed [Company] that such clause was incompatible with the United Nations financial regulation 3.11, since under this *pro bono* arrangement, the Member States could bear the liability of a claim under appendix D to the United Nations Staff Rules ("Appendix D") for a staff member signing the release, but the staff member could not offset such a claim by recovering damages from [Company] or the other Company if they were the source of the staff member's injury, illness or death. (As you recall, under article VI of Appendix D, the United Nations would have a lien against such recovery by the staff member to the extent of amounts paid to the staff member (or his/her beneficiaries) under Appendix D).

3. Since such a clause was not acceptable to the United Nations, OLA together with OCHA negotiated a revised text whereby [Company] would agree to be liable for such a claim or liability up to the limits of [Company]'s general liability insurance coverage, or [amount] per occurrence and [amount] in the aggregate, and that [Company] would maintain such general liability insurance covering the above-referenced amounts and naming the United Nations as an additional insured. Please see the "Insurance" clause in the revised waiver and release form (copy attached).* [Name] has confirmed that the text of the attached revised waiver and release form is agreeable to it. [Company] has provided a copy of the certificate of insurance evidencing the necessary coverage (copy attached).*

4. We consider that the above-referenced insurance coverage would legally be sufficient to protect the United Nations in the present case. Of course, a final decision on this matter requires your Office's approval, as your Office would have to agree that this proposed arrangement resolves the issue under financial regulation 3.11 that acceptance of such a *pro bono* contribution cannot "directly or indirectly involve additional financial liability for the Organization".

5. We are pleased that we have been able to work out the terms for an agreement on this element of the overall cooperation with [Company] and the entire [Name] family firms. Given that [Company] and OCHA are anxious to make further progress on the logistical arrangements for the workshop and that [Company] has informed OLA and

* Not reproduced herein.

OCHA that it cannot finalize those arrangements until confirmation that an agreement has been reached on the terms and conditions of the waiver and release form, we would be grateful for your Office's urgent review and approval of the arrangement described above.

6. [. . .]

3 October 2012

5. Personnel questions

Inter-office memorandum to the Senior Legal Officer, Office of Operations, United Nations Environmental Programme (UNEP), concerning the proposed secondment of personnel for the Care 4 the Climate (C4C) initiative

Secondment of private sector personnel to the United Nations is not consistent with the United Nations Staff Regulations and Rules—ST/AI/231/REV.1—Use of gratis personnel—Possible conflict of interest and of loyalty—General Assembly decisions on "secondment" to the service of the Organization and the Staff Regulations and Rules are strictly limited to secondment from the service of a Member State or another international intergovernmental organization—Alternative to engage the private sector personnel as consultants on a project cooperation basis

1. I refer to your e-mail message of 31 January 2012, seeking advice on a request received from UNEP Division for Technology, Industry and Economics for an arrangement whereby a private sector individual would be seconded to the C4C initiative by the Foundation for the Global Compact. You have indicated that the C4C initiative is a joint initiative of the United Nations Global Compact Office and UNEP, launched by the Secretary-General in 2007, and aimed at advancing the role of business in addressing climate change. We understand that the Global Compact Office and UNEP are cooperating under a letter of agreement to advance issues relating to climate change in the private sector and that the role of the seconded person would be to "coordinate C4C activities and undertake initiatives that promote sustainability in the C4C companies" (it is not clear to the Office of Legal Affairs (OLA) what is meant by C4C companies). You have also indicated that it has not been decided whether the private sector individual would be seconded to the Global Compact Office, which would in turn second the individual to UNEP and the United Nations Framework Convention on Climate Change, 1992[*] (UNFCCC), or whether the individual will be seconded directly to the Global Compact Office, UNEP and UNFCCC. However, it is envisioned that the individual would be seconded as a non-reimbursable loan under ST/AI/231/Rev.1[**] and that there would be no financial implications for UNEP.

2. From the information provided, we understand that the seconded individual would maintain his or her employment status, rights and benefits with his or her private sector employer, including the payment of salaries and benefits from the employer, while working on C4C projects in the offices of the Global Compact Office, UNEP, and or of the UNFCCC. The documents provided to us indicate that the seconded individual will be subject to "all

[*] United Nations, *Treaty Series*, vol. 1771, p. 107.

[**] Administrative instruction of 23 January 1991, entitled "Non-reimbursable loan of personnel services from sources external to the United Nations common system".

the policies and procedures that are applicable to full-time personnel on the [United Nations Global Compact (UNGC)] [UNEP] [UNFCCC] premises . . .” We also understand that the seconded person would work under the supervision of the UNGC/UNEP/UNFCCC. Such an arrangement, whereby private sector personnel would be seconded to the United Nations and work under the instructions of the United Nations staff, raises a number of issues, including the use of gratis personnel, which has been limited by decisions of the General Assembly, the possibility of conflict of interest, and of the loyalty of the private sector personnel. OLA has consistently advised that the secondment of private sector personnel to the United Nations and its Funds and Programmes, whereby they would maintain their employment status with their employers is not consistent with the United Nations Staff Regulations and Rules. Therefore, use of such personnel through secondment from the private sector could not be authorized in the context of cooperation activities with the private sector. The General Assembly decisions on “secondment” to the service of the Organization and the Staff Regulations and Rules on the matter are strictly limited to secondment from the service of a Member State or another international intergovernmental organization. (See e.g., staff regulation 4.1, which refers to “a staff member on secondment from government service”). In view of the foregoing, the co-mingling of personnel of the Organization with the private sector would create serious problems under the Charter of the United Nations and the Staff Regulations and Rules. Even if the Foundation for the Global Compact were to be the conduit for the secondment to the United Nations, as it is envisaged under the proposal, it would not change the concerns raised above, because the Foundation is a private entity outside of the United Nations. Moreover, under non-reimbursable loan arrangements made pursuant to ST/AI/231/Rev.1, the borrowed personnel are considered independent contractors and not as having been seconded or loaned to the service of the Organization.

3. Therefore, an alternative to secondment for enhancing programme delivery in the present case appears to be to engage the private sector personnel as consultants, or to use them on a project cooperation basis, rather than on an employment basis. As such, the private sector personnel could remain in the employ of his or her private sector employer and work with the United Nations through a cooperative, project-based agreement. Under such arrangement, the private sector personnel would not work under the United Nations’ supervision, nor would the United Nations staff be supervised by them and they would not work on United Nations premises. Also, such project-based agreements could deal with cost issues, such as travel, and if needed, other reimbursement arrangements, along the lines of the provisions in ST/AI/231/Rev.1. Such an agreement would also require the approval of the appropriate financial and human resources officials. Therefore, we recommend that you consult with the United Nations Office at [City] Human Resources and Finance in this regard.

4. [. . .]

23 February 2012

6. Other issues relating to peacekeeping operations

(*a*) Note concerning an allegation of attempted theft against a member of a military contingent

Attempted theft committed by a member of a peacekeeping operation amounts to both misconduct under United Nations rules and also to a criminal offence

UNDER THE LAWS OF THE HOST COUNTRY—PROCEDURES FOR INVESTIGATING MISCONDUCT COMMITTED BY MEMBERS OF NATIONAL MILITARY CONTINGENT—ARTICLE 7 *QUATER* OF THE MODEL MEMORANDUM OF UNDERSTANDING FOR CONTRIBUTION OF RESOURCES TO UNITED NATIONS PEACEKEEPING OPERATIONS—TROOP-CONTRIBUTING COUNTRIES ARE RESPONSIBLE FOR INVESTIGATING ACTS OF MISCONDUCT BY MILITARY PERSONNEL OF THEIR NATIONAL CONTINGENTS AND FOR EXERCISING DISCIPLINARY AUTHORITY—UNITED NATIONS DUTY TO COOPERATE WITH COMPETENT TROOP-CONTRIBUTING COUNTRY AUTHORITIES—RESPONSIBILITY OF THE HOST STATE TO INVESTIGATE AND PROSECUTE ANY CRIMES COMMITTED AGAINST UNITED NATIONS MISSION PERSONNEL—GOVERNMENTS OF THE STATE HOSTING A PEACEKEEPING OPERATION AND TROOP-CONTRIBUTING COUNTRIES MAY AGREE ON ARRANGEMENTS WHEREBY NATIONALS OF A TROOP-CONTRIBUTING COUNTRY MAY BE ALLOWED TO INVESTIGATE CRIMES COMMITTED AGAINST THEIR PERSONNEL IN THE HOST STATE.

1. I refer to your memorandum of [date] forwarding to us a code cable from [United Nations Mission] with an attached preliminary investigation report prepared by the [United Nations Mission]'s Force Provost Marshal (FPM) into an alleged "shoplifting" committed by a member of the [troop-contributing country (TCC)] military contingent at the "[Organization] shop" in [City]. Essentially, it is alleged that following a tip from a shop attendant, the [Nationality of TCC] officer (of the rank of major) was stopped and searched by a [Nationality of the Host State] policeman while leaving the shop, and that he was found to have taken some items from the shop for which he had not paid. The FPM report concludes that there is overwhelming evidence that the officer attempted to shoplift the items. It also concludes that the policeman assaulted the officer and thus inflicted bodily harm on him during the incident. We understand that the [TCC] authorities sent a team to [City] to investigate the alleged assault, although it is not clear if the team's terms of reference also included investigating the alleged theft.

2. Your memorandum requests our views on issues related to the investigation instituted by the [TCC] authorities, particularly the points mentioned in paragraphs 8, 9 and 10 of the code cable from [United Nations Mission]. It appears that the first query arising from the [United Nations Mission] cable is whether the [TCC] delegation that visited the [United Nations Mission] from [date] is the appropriate authority to conduct the investigation into the incident. Secondly, the Office of Legal Affair's (OLA) views are sought on whether the FPM report should be shared with the [TCC] investigation team. Thirdly, we are also requested to advise whether in the event the [TCC] investigation involves interviewing members of the local population, any communications between relevant authorities for access to such local witnesses should be handled by DPKO/DFS or by [United Nations Mission].

3. As a preliminary matter, we note that any attempted theft, including shoplifting, committed by a member of a peacekeeping operation would amount to both misconduct under United Nations rules and also to a criminal offence under the laws of the host country.

4. The procedures for investigating misconduct committed by members of national military contingents are laid down in article 7 *quater* of the Model Memorandum of Understanding for contribution of resources to United Nations peacekeeping operations, the latest version of which has been published as General Assembly document A/C.5/63/18 (the "MOU").

5. Pursuant to the MOU, troop-contributing countries are responsible for investigating acts of misconduct by military personnel of their national contingents and for exercising disciplinary authority in relation to such misconduct. Moreover, the MOU reaffirms the principle established in the model status-of-forces agreement (A/45/594) between the United Nations and the State hosting a peacekeeping operation, that the TCC shall have exclusive jurisdiction over criminal offences committed in the United Nations Mission area by military members of TCC's national contingent. Clearly, therefore, the responsibility to investigate the theft allegedly committed by a member of the [TCC] contingent of [United Nations Mission]—whether viewed from a disciplinary or a criminal law perspective—lies with the Government of [TCC].

6. Pursuant to the MOU, the Government of the TCC assures the United Nations that it shall exercise jurisdiction over misconduct and over criminal offences committed by its troops. The MOU further requires that the United Nations cooperate with the competent authorities of the TCC, including national investigations officers (NIOs), in the investigation of misconduct or alleged crimes by troops, and that the United Nations provide necessary liaison with host country authorities in order to facilitate the TCC's access to witnesses who are not part of the TCC's contingent, and also to evidence "not in the ownership or control" of the TCC.

7. The MOU also provides that if the United Nations conducts an investigation into alleged misconduct or serious misconduct of a member of a national contingent, it shall provide its findings and evidence to the relevant TCC, which is obligated to take action to address the matter and to advise the United Nations about the action taken.

8. Accordingly, the Government of [TCC] has the authority and the responsibility to investigate the theft allegedly committed by a member of its national contingent in [United Nations Mission]. If the [TCC] team present in [City] has informed [United Nations Mission] that it has been appointed to investigate this incident, we see no basis to question that team's authority to conduct the investigation on behalf of the [TCC] Government. Moreover, under the express terms of the MOU, the United Nations should provide the FPM investigation report to the [TCC] investigators. Additionally, if the [TCC] investigation involved interviewing witnesses in [City] who are not part of the [TCC] contingent, the United Nations should work with the [TCC] investigators to facilitate such investigation, i.e., by requesting the [Host State] authorities to grant access to local witnesses or to evidence in their possession. Should the [TCC] investigators need to interview witnesses from other [United Nations Mission] contingents or require evidence not in the possession or control of the [TCC] authorities, the United Nations should also liaise with the relevant Governments to facilitate such interviews or access to evidence. In this regard, communications from the United Nations to the relevant Governments may be sent by DPKO/DFS or by [United Nations Mission]. We see no legal impediments to such communications being handled by DPKO/DFS or by [United Nations Mission].

9. The above having been said, we also note that according to the [United Nations Mission] code cable, the [TCC] authorities are investigating the alleged assault but it is not clear if they are also investigating the alleged attempted theft or "shoplifting". In that regard, we note that both as a general legal principle and also in accordance with the [United Nations Mission] status-of-forces agreement executed between the United Nations and [Organization] on the one hand, and the Government of [Host State] on the other, the

Government of [Host State] has the responsibility to investigate and prosecute any crimes committed against [United Nations Mission] personnel. Accordingly, the authority and responsibility to investigate the assault lies with the Government of [Host State]. However, it is open to the Governments of [Host State] and [TCC] to agree on arrangements whereby the [nationals of TCC] may be allowed to investigate crimes committed against [TCC] personnel in [Host State]. While we have no information concerning any such arrangements between the two Governments, we note that it is in the United Nations interests that crimes committed against its peacekeepers be investigated and that those responsible be prosecuted. DPKO/DFS and [United Nations Mission] should verify if any arrangements have been made between the Governments of [TCC] and [Host State] enabling [TCC] to investigate the alleged assault. If such arrangements have been made, DPKO/DFS and [United Nations Mission] should co-operate with such investigation, including by providing the FPM report, insofar as it also relates to the incident in which the assault allegedly occurred.

10. In advising that the FPM report be provided to the investigating authorities, we note that while the report includes witness statements from two shop attendants, nothing suggests that either of the attendants gave their statements on the understanding that their names would be kept confidential, or that the statements would not be provided to government authorities who might have to deal with this matter. We also note that the only other witness statements attached to the report were made by five [TCC] soldiers. We therefore see no legal considerations that would dictate that the witness statements not be provided to the [TCC] authorities, especially given the requirements in articles 7.12 and 7.13 of the MOU, that preliminary investigation reports and administrative reports conducted by the United Nations be provided to the TCC.

6 February 2012

(*b*) Inter-office memorandum to the Director of the Investigation Division, Office of Internal Oversight Services (OIOS), concerning a report of possible misconduct involving members of a military contingent

The United Nations is obligated to inform the Government of the troop-contributing country concerned of alleged misconduct, subject to there being "*prima facie* grounds" indicating that the members of the contingent committed misconduct—The obligation applies irrespective of where the alleged misconduct may have been committed, as long as the contingent was on assignment with a United Nations mission—Notification will enable the State Government to exercise exclusive or disciplinary jurisdiction, consistent with its obligations

1. This is with reference to your memoranda, dated [. . .] and [. . .], requesting the Office of Legal Affairs' (OLA) advice on whether reports of misconduct by national contingent members that occur outside the mission to which they are deployed, require notification by the United Nations to the Government of the troop-contributing country (TCC) concerned.

2. OIOS' query has arisen in the context of alleged misconduct committed in [State] by [TCC] soldiers serving with [United Nations Mission]. OIOS has taken the view that, under the relevant Memorandum of Understanding with the relevant troop-contributing

country (TCC MOU), the United Nations would not have an obligation to notify the Government of [TCC] of such alleged misconduct. OIOS notes in this respect that the TCC MOU "defines misconduct with an express reference to status-of-forces agreements" and that the "[United Nations Mission] status-of-forces agreement, in turn, limits the territory of the agreement to [Host State]."

3. Pursuant to article 3 of the Memorandum of Understanding between the United Nations and the Government of [TCC] contributing resources to [United Nations Mission], dated [. . .], as amended on [date] (MOU),[1] the MOU "[establishes] the administrative, logistics and financial terms and conditions to govern the contribution of personnel, equipment and services provided by the [TCC] in support of [United Nations Mission]" (MOU). Notably, article 7.12 of the MOU requires that "[i]n the event that the United Nations has *prima facie* grounds indicating that any member of the Government's national contingent has committed an act of misconduct or serious misconduct, the United Nations shall without delay inform the Government."

4. Article 7.12 of the MOU does not draw a distinction as to whether the alleged misconduct was committed in the mission area, or in another country. Thus, as a legal matter, article 7.12 of the MOU would apply in respect of any misconduct committed by a member of the contingent, irrespective of where it may have been committed. In this regard, we would also note that in articles 7.22 and 7.23 of the MOU the Government provides assurances to the United Nations that it will exercise jurisdiction in respect of crimes, offences or other acts of misconduct committed by the members of the military contingent while they are assigned to the military component of [United Nations Mission]. Again, articles 7.22 and 7.23 of the MOU do not draw a distinction as to the location of the crime, offence or other misconduct. Rather, the determining criterion here is that the crime, offence or other misconduct must have been committed by the member of the contingent whilst on assignment with [United Nations Mission]. In this regard, we would note that, even if the members of the contingent concerned were on vacation in [State], as stated in your memorandum, we do not think that this fact would negate their status as being on assignment with [United Nations Mission].

5. For the reasons set out above, the United Nations is obligated to inform the Government of [TCC] of the alleged misconduct, subject, of course, to there being "*prima facie* grounds" indicating that the members of the contingent committed misconduct. Should such *prima facie* grounds exist, such notification will then enable the Government of [TCC] to exercise exclusive or disciplinary jurisdiction, consistent with its obligations under articles 7.22 and 7.23 of the MOU.

6. [. . .]

25 May 2012

[1] The MOU was amended on [date] to include into the MOU clauses addressing sexual exploitation and abuse, on the basis of General Assembly resolution 61/267B. The MOU, referred to in this memorandum, is for [Nationality] infantry battalions. While we do not know as to whether the soldiers in this case formed part of such battalions, we note that the provisions in the MOU are standard provisions and would also apply in the context of other MOUs for the provision by the Government of [State] of troops to [United Nations Mission].

7. Miscellaneous

Inter-office memorandum to the Officer-in-charge and Chief Legal Adviser, Legal Affairs Programme of the United Nations Climate Change Secretariat with respect to the legal status of Western Sahara and whether the Kingdom of Morocco can host a project activity within the territory of Western Sahara

Legal opinion provided by the Legal Counsel on 29 January 2002 on the legal framework concerning the exploitation of mineral resources in a Non-Self-Governing Territory and setting out the applicable principles concerning any economic activities in Non-Self-Governing Territories—Current status of Western Sahara is that of a Non-Self-Governing Territory, under the *de facto* administration of Morocco—Two-limb test with respect to the carrying out of foreign economic activities in Non-Self-Governing Territories

1. This is in reference to your memorandum of [date] in which you advise that the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat received a request concerning a proposed Clean Development Mechanism (CDM) project activity to be hosted by the Kingdom of Morocco in Western Sahara. In response to the request, the UNFCCC Secretariat replied, on behalf of the Chair of the CDM Executive Board, that in light of, *inter alia*, the Advisory Opinion of the International Court of Justice of 16 October 1975[*] and a number of United Nations Security Council and General Assembly resolutions which raise questions with regard to the sovereignty of the Kingdom of Morocco over Western Sahara, it was doubtful whether a CDM project activity could be implemented by the Kingdom of Morocco in Western Sahara. We note that in its letter of [date], the Government of the Kingdom of Morocco has taken issue with the response of the UNFCCC Secretariat. You seek our advice with respect to the legal status of Western Sahara, and consequently whether the Kingdom of Morocco can host a project activity within the territory of Western Sahara.

2. As you may be aware, the legal status of the Territory of Western Sahara, and of Morocco in relation to the Territory, was addressed in a legal opinion provided by the United Nations Legal Counsel on 29 January 2002 at the request of the Security Council (S/2002/161) ("the opinion"). As noted in the opinion, Western Sahara, formerly a Spanish protectorate since 1884, was included in the list of Non-Self-Governing Territories in 1963, and has the status of a "Non-Self-Governing Territory under Chapter XI of the Charter".

3. Regarding the position of Morocco *vis-à-vis* Western Sahara, as noted in the opinion, on 14 November 1975, a Declaration of Principles on Western Sahara was concluded in Madrid between Spain, Morocco and Mauritania ("the Madrid Agreement"), whereby "the powers and responsibilities of Spain, as the administering Power of the Territory, were transferred to a temporary tripartite administration". However, as noted in the opinion, the Madrid Agreement

> "did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred. The transfer of administrative power over the Territory

[*] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975,* p. 12.

> to Morocco and Mauritania in 1975 did *not* affect the international status of Western Sahara as a Non-Self-Governing Territory" (emphasis added).

As stated in the opinion, following the withdrawal of Mauritania from the Territory in 1979, Morocco, which is "not listed as the Administering Power of the Territory in the United Nations list of Non-Self-Governing Territories, and has therefore, not transmitted information on the Territory in accordance with Article 73 (e) of the Charter of the United Nations", has administered the Territory of Western Sahara alone. As such, based on the foregoing, Morocco has the status of a *de facto* administrator of the Territory.

4. As noted in the opinion, the question of Western Sahara has been dealt with both by the General Assembly, as a question of decolonization, and by the Security Council, as a question of peace and security. We note that in its recent resolution 2044 (2012) of 24 April 2012, the Security Council "reaffirmed its commitment to assist the parties to achieve a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter". However, until such time as a political solution is reached, the current status of Western Sahara is that of a Non-Self-Governing Territory, under the *de facto* administration of Morocco.

5. As set out by the opinion, the legal regime applicable to Non-Self-Governing Territories is provided by Article 73 of the Charter and by resolutions of the General Assembly relating to decolonization and economic activities in Non-Self-Governing Territories. As summarized in the opinion,

> "[t]he principle that the interests of the peoples of Non-Self-Governing Territories are paramount, and their well-being and development is the "sacred trust" of their respective administering Powers, was established in the Charter of the United Nations and further developed in General Assembly resolutions. . . . In recognizing the inalienable rights of the peoples of Non-Self-Governing Territories to the natural resources in their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources. The Assembly recognized, however, the value of economic activities which are undertaken in accordance with the wishes of the peoples of those Territories, and their contribution to the development of such Territories".

6. While the opinion focuses on the legal framework concerning the exploitation of mineral resources in a Non-Self-Governing Territory, it sets out the applicable principles concerning any economic activities in Non-Self-Governing Territories. It refers to resolutions of the General Assembly under the agenda item "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", which called upon administering Powers to ensure "that all economic activities in Non-Self-Governing Territories under their administration did not adversely affect the interests of the peoples of such Territories, but were directed towards assisting them in the exercise of their right to self-determination". The opinion notes an "important evolution of this doctrine" and refers to a distinction drawn by the General Assembly between activities that are detrimental to the peoples of these Territories and those directed to benefit them. It refers to paragraph 2 of General Assembly resolution 50/33 of 6 December 1995 in which the General Assembly affirmed "the value of foreign economic investment undertaken *in collaboration with the peoples of the Non-Self-Governing Territories and in accordance with their wishes in order to*

make a valid contribution to the socio-economic development of the Territories" (emphasis added), which position has been affirmed in later resolutions.

7. The opinion concludes that "recent State practice, though limited, is illustrative of an *opinio juris* on the part of both administering Powers and third States: where resource exploitation activities are conducted in Non-Self-Governing Territories *for the benefit of the people of those Territories, on their behalf or in consultation with their representatives*, they are considered compatible with the Charter obligations of the administering Power and in conformity with the General Assembly resolutions and the principle of 'permanent sovereignty over natural resources' enshrined therein" (emphasis added).

8. We are unaware of the precise nature of the proposed CDM project activity in Western Sahara, or of how the proceeds generated by it will be used. However, we understand that, as a "wind farm", the project is an economic activity which is likely to have a significant impact on certain natural resources of the Territory, not least in terms of the amount of land used to host the wind farm, and the effect of the installation of wind farm on the physical environment, but also in terms of generating electricity and creating a resource that can be traded and sold.

9. We are not in a position to advise on the interpretation of the Kyoto Protocol[*] to the UNFCCC, and are not aware of any practice concerning Non-Self-Governing Territories under it. Nevertheless, based on the foregoing analysis, it is our view that principles of international law described above establish a two-limb test with respect to the carrying out of foreign economic activities in Non-Self-Governing Territories: first, such activities must be for benefit of the people of those Territories; and second they must be carried out on their behalf, or in consultation with their representatives. The question whether Morocco can host the project activity in Western Sahara would thus depend on the interpretation of the UNFCCC and its Protocol, and whether the CDM project is consistent with principles of international law concerning economic activities in a Non-Self-Governing Territory. Whether the above-mentioned conditions are met in this case is of course a question of fact on which we are not in a position to advise.

28 June 2012

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. International Fund for Agricultural Development

(Submitted by the General Counsel of the International Fund for Agricultural Development)

(*a*) Memorandum concerning safeguards for the long-term viability and continuity of the International Fund for Agricultural Development (IFAD or the Fund) operations

Impact of grant financing—Debt sustainability mechanism (DSF grants)—IFAD basic documents require the Fund to always ensure at least "break-even"—

[*] United Nations, *Treaty Series*, vol. 2303, p. 148.

PERIODIC REVIEW OF THE ADEQUACY OF RESOURCES (REPLENISHMENT)—FINANCIAL PRUDENCE—WHETHER THE EXECUTIVE BOARD SHOULD CONTINUE TO APPROVE DSF GRANTS BEFORE THE GOVERNING COUNCIL HAS SECURED BINDING LEGAL COMMITMENTS FROM THE MEMBER STATES TO COMPENSATE THE FUND

1. *The issue*: At the 122nd session of the Audit Committee (23 March 2012) I was asked whether there are any legal provisions in the Fund's basic documents that address the question whether the organization should "break-even"; in other words, whether it is mandatory for the organization to always ensure that at any time its forecasted revenues at least equal to its estimated total costs. This question was posed in the context of the impact of grant financing, in particular the debt sustainability mechanism ("DSF grants") on the financial soundness of the Fund. The present memorandum elaborates in more details on my initial oral response given at the aforementioned session.

2. The Agreement Establishing IFAD ("Agreement")[*] as well as various rules, regulations and policies adopted thereunder, contains safeguards for the long-term viability of the Fund and the continuance of its operations, from which it can be derived that *the basic documents require the Fund to always ensure at least "break-even"*. Broadly speaking these safeguards can be divided between those concerning the periodic review of the adequacy of the Fund's resources and those that are designed to ensure financial prudence in its operations.

3. *Periodic review of the adequacy of resources ("Replenishment")*: According to article 4.3. of the Agreement, in order to assure continuity in the operations of the Fund, the Governing Council shall periodically, at such intervals as it deems appropriate, review the adequacy of the resources available to the Fund. If the Governing Council, as a result of such review, deems it necessary or desirable, it may invite member States to make additional contributions ("replenishment contributions") to the resources of the Fund.

4. *Financial prudence*: As regards to the rules, regulations and policies designed to ensure financial prudence in the operations of the Fund, mention should be made of (i) the prohibition to write-off certain claims, (ii) the General Reserve, (iii) the constrains on investment, (iv) commitment policy, (v) the lending terms, (vi) the mitigation of credit risk, (vii) the grant ceiling for ordinary grants, and (viii) the duty to ensure long term viability when approving DSF grants.

5. *i) Prohibition to write-off certain claims*: An analysis of the Agreement and IFAD's other basic legal documents show that the power to approve the reduction or "writing-off" of a contribution pledge or of loan obligations has not been attributed to any of its governing bodies. In particular, regulation X.3 stipulates as follows: "*The President may, after full investigation, with the approval of the Executive Board, authorize the writing-off of losses of cash, supplies, equipment and other assets, other than arrears of contributions or payments due under loan or guarantee agreements and shall inform the Executive Board.*" As regards loan obligations, mention should also be made of the fact that the Governing Council has set a limit to the Executive Board's authority to amend the terms of a loan for the purpose of resolving arrears. Thus, paragraph 32(g) of the Lending Policies and Criteria requires that when considering settlement plans the Executive Board secures the "original Net Present Values (NVP) of the loan".

[*] United Nations, *Treaty Series*, vol. 1059, p. 191.

6. *ii) General Reserve*: The General Reserve, which by virtue of Governing Council resolution 168/XXXV (2012) now features as financial regulation XIII, was established by the Governing Council in 1980 to address the potential risk of over-commitment of IFAD resources as a result of exchange rate fluctuation, possible delinquencies in the receipt of loan service payments, and possible delinquencies in the recovery of amounts due to the Fund from the investment of its liquid assets.[1] In 1999, the Governing Council recognized the need to provide further cover for the Fund against the potential over-commitment risk resulting from a diminution in the value of assets caused by fluctuations in the market value of investments. In establishing the General Reserve, the Governing Council authorized the Executive Board to approve future transfers from IFAD's resources up to a ceiling of US$100 million, taking into account the Fund's financial position. The Governing Council also decided that the ceiling of the General Reserve could be amended from time to time by the Executive Board.[2]

7. *iii) Constraints on investment*: The Governing Council have set stringent tests to be abided by if and when the President decides to use his discretion to invest resources not immediately needed for disbursement under loans and grants or for administrative expenditures. Financial regulation VIII(2) states: "*In investing the resources of the Fund the President shall be guided by paramount considerations of security and liquidity.* Within these constraints the President shall seek the highest possible return in a non-speculative manner." The first sentence of the above provision clearly conveys the message that security and liquidity are the most important criteria that any investment should comply with. This is the meaning of the terms "constraints". In other words, if the President cannot ensure that an investment is secure and liquid, he should refrain from authorizing the investment. This is logical because he needs to ensure that the resources are available whenever they are needed for making disbursements or for making payments to defray the costs of the organization. By way of illustration, and stated in simplified terms, this excluded investment in assets and in equities on long term bonds that can only be liquidated at a lower price than that for which they have been acquired. Moreover, the second sentence of the quoted provision indicates that return maximization only comes into play if, and as long as, liquidity and security is guaranteed. Even then, any pursuit of return optimization should be undertaken in a non-speculative manner.

8. *iv) Commitment policy*: The Agreement grants the authority to approve agricultural financing by the Fund to the Executive Board,[3] and from the outset it requires the Board to pay due regard to the long-term viability of the Fund and the need for continuity in its operations and to decide from time to time the proportion of the Fund's resources to be committed in any financial year in any of the three forms of financing.[4] Acting under this provision at its thirty-fourth session of the Executive Board decided that "only actual payments received in the form of cash or promissory notes will be included in committable resources. The value of instruments of Contribution against which payment in the form cash or promissory notes has not yet been made will be excluded from

[1] Governing Council resolution 16/IV (1980).

[2] Governing Council resolution 111/XXII (1999).

[3] Agreement establishing IFAD, article 7.2(c) and (d).

[4] *Ibid*., article 7.2(b), first sentence.

committable resources."[5] In other words, although instruments of contribution are in law binding legal commitments similar to the loan agreements concluded with member States, the Executive Board opted to restrict the determination of the resources available for commitment to actual payments.

9. *v) Lending terms*: Article 7.2(d) of the Agreement provides that decisions with regard to the selection and approval of projects and programmes shall be made by the Executive Board and that such decisions shall be made on the basis of the broad policies, criteria and regulations established by the Governing Council. The Lending Policies and Criteria adopted by the Governing Council at its second session (1978) exclude the possibility of charge- or interest-free loans. As a matter of fact, when determining the applicable interest to loans on intermediate and ordinary terms, the long-term effect of the rates are duly taken into account.[6] This confirms that the lending terms form an indispensable tool among the Fund's instruments for exercising financial prudence.

10. *vi) Mitigation of credit risk*: The Governing Council acknowledges the potential of falling victim to credit risk in the Fund's operations, i.e. the risk of loss of principal or loss of a financial return stemming from a borrowing member State's failure to repay a loan or otherwise meet a loan obligation. In order to mitigate this risk the Governing Council has decided that the allocation to any single recipient country shall not exceed ten per cent (10%) of the Fund's total annual lending, or such other per cent as may be determined by the Executive Board, to be applied flexibly depending on resource availability.[7]

11. *vii) Grant ceiling for ordinary grants*: As mentioned earlier, financing by the Fund may take the form of loans, grants and DSF grants. Obviously, because of the primary difference between loans and grants (a loan must be repaid, usually with interest; while a grant does not have to be repaid) the long-term viability and continuity of operations cannot be assured if no limit is set to the proportion of grants. Indeed, when the Fund was being set up some delegates felt that "the matter of proposing a substantial increase in the proportion of grants should be considered carefully as grants might, in some cases, not ensure effective use of resources and a high proportion of grants might jeopardize the continuing operation of the Fund over the long run."[8] In the event the following was included in article 7.2(b) of the Agreement:

> "The proportion of the Fund's resources to be committed in any financial year for financing operations in any of the forms referred to subsection (a) shall be decided from time to time by the Executive Board with due regard to the long-term viability of the Fund and the need for continuity in its operations. The proportion of grants shall not normally exceed one-eighth of the resources committed in any financial year."

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[5] IFAD, minutes of the thirty-fourth session of the Executive Board, document EB/34 of 30 November 1988.

[6] See, for example, IFAD's lending terms and conditions: Interest rate for the year 2010 for loan on ordinary and intermediate terms, contained in section D of document EB 2009/98/R.14.

[7] IFAD, Lending Policies and Criteria adopted by the Governing Council at its second session on 14 December 1978, paragraph 24, second sentence. Available from http://www.ifad.org.

[8] IFAD, Report of the meeting of interested countries on the establishment of IFAD on the work of its second session, document WS/3879/C of 10 November 1975.

12. This provision contains two imperatives. First, the Executive Board should bear a continuous responsibility to ensure the long-term viability of IFAD. Second, that the Fund shall be viable on a long-term basis and that the resources base provided by the initial contributions and the additional contributions made during each replenishment, as well as other resources, should not be depleted by the provision of too high a proportion of those funds as grants or, by commitment of all the available resources in a short period of time, as loans.[9]

13. *viii) Duty to ensure long-term viability when approving DSF grants*: Since the creation of the DSF-grant as the third form of financing of IFAD, the fourth sentence of the amended article 7.2(b) of the Agreement provides that "[a] debt sustainability mechanism and the procedures and modalities therefore shall be established by the Executive Board *and financing provided thereunder shall not fall within the above-mentioned grant ceiling*". On its face this suggests that there is no limit to the proportion of financing that can be given in the form of DSF grants. This is, however, only apparent because the first sentence of article 7.2(b) reads that "*[t]he proportion of the Fund's resources to be committed in any financial year for financing operations in any of the forms referred to in subsection (a) shall be decided in from time to time by the Executive Board with due regard to the long-term viability of the Fund and the need for continuity in its operations*." The function of this provision is for the Board to determine how much of the Fund's resources it can commit each financial year, without compromising the long-term viability of the Fund. To enable the Executive Board to discharge this responsibility the Executive Board regularly considers a document entitled "Resources Available for Commitment", to decide how much of the resources of the Fund it would like to commit (as loans, grants and DSF grants) having regard to the long-term viability of the Fund. In other words, the Board is required to make a determination. Based on management's own calculation the document states an amount that is considered available. In so doing management makes assessment that the Board may or may not necessarily agree with. Therefore, it is incumbent upon management to supply the Executive Board with the information that should enable the latter to consider impact on DSF grants on the long-term viability and continuity of operation. Inherent in article 7.2(b) is that the Executive Board should abstain from approving DSF grants if that would erode the long-term viability and continuity of the Fund.

14. It seems that the current assumption is that member States will compensate the Fund for the foregone principal and interest. Indeed, the Consultation on the Seventh Replenishment of IFAD's Resources recommended that "IFAD member States, particularly those that are major contributors of official development assistance, should agree to compensate IFAD fully for principal repayments foregone as a result of application of the debt sustainability framework within a pay-as-you-go mechanism as adopted in IDA 14."[10] In 2007, the Executive Board endorsed the concept of a pay-as-you-go compensation mechanism, through which member States would compensate the Fund for the value of the reflow and interest forgone in the previous replenishment period through con-

[9] Notes on the legal aspects of self-sustainability, Legal Opinion of 17 May 1996.

[10] IFAD, Report of the consultation on the seventh replenishment of IFAD's resources (2007–2009), document GC 29/L.4 of 25 January 2006.

tributions in addition to core replenishment contribution.[11] *However, to date there exist no legally binding commitments to any member State to compensate*. As is known neither the Executive Board nor the Governing Council can impose any financial obligation on any member State, which is why the assumption that the Fund will be compensated cannot be based solely on the endorsement of the Consultation report by the Governing Council or the Executive Board's approval of the document on the DSF Framework. *Given article 7.2(b), first sentence—if it is assessed that continuing with the DSF grants beyond the Tenth Replenishment would erode long-term viability of the Fund and the need for continuity in its operations—it would be questionable whether the Executive Board should continue to approve DSF grants before the Governing Council has secured binding legal commitments from the member States to compensate the Fund*. Moreover, in light of the fact that according to the commitment policy the value of legally binding instruments of contribution against which payment in the form cash of promissory notes has not yet been made will be excluded from committable resources, even upon obtaining such binding legal commitment only the paid contribution may count for calculating the resources available for commitment.

21 May 2012

(*b*) Inter-office memorandum to the Chairman of the Evaluation Committee concerning [State]'s request to attend the upcoming Evaluation Committee session as an observer

Legal framework regulating whether non-IFAD members can attend meetings of the Evaluation Committee as observers—Limited authority of the Evaluation Committee and the President to grant observer status—Decisions regarding the participation of non-IFAD members in Evaluation Committee meetings are within the competence of the Executive Board

Introduction

I refer to your e-mail of 19 November 2012 regarding the opinion of the Office of the General Counsel (LEG) concerning [State]'s request to attend the upcoming Evaluation Committee (hereinafter EC or the Committee) meeting as an observer.

A. Legal framework

As a subsidiary body established by the Executive Board and tasked to prepare certain deliberations and decision-making by the Executive Board, the Evaluation Committee performs only those functions and has only those authorities given to it by the Executive Board. Therefore to answer the question whether representatives of non-IFAD members can attend meetings of the Evaluation Committee, reference has to be made to the Terms of Reference and Rules of Procedure of the Evaluation Committee and to the Rules of Procedure of the Executive Board.

[11] IFAD, Proposed arrangement for implementation of a debt sustainability framework of IFAD, document EB/2007/90/R.2 of 21 March 2007.

With respect to participation to the EC meetings, the Terms of Reference and Rules of Procedure of the EC (EB 2011/102/R.47/Rev.1) provide the following:

> "2.6. The meetings of the Evaluation Committee shall be open to the Director of the Office and such staff members of the Fund as the President may, from time to time, designate, as well as other staff of the Office when its Director decides that they should attend as resource persons, except in relation to the matters foreseen in paragraph 3.1(k) below.
>
> 2.7. Executive Board members who are not members of the Evaluation Committee may also, as observers, attend meetings except when matters foreseen in paragraph 3.1(k) below are discussed."

Section 4.1 of the document ("Final provision") further provides that:

> "[. . .] In conformity with rule 11.3 of the Rules of Procedure of the Executive Board and with exception of rule 25 [i.e. Appointment]) and 29 [i.e. Method of suspension] of the same, unless otherwise determined in the present Terms of Reference, the said Rules of Procedure of the Executive Board should apply, mutatis mutandis, to the proceedings of the Evaluation Committee."

In this respect, rule 8 of the Rules of Procedure of the Executive Board stipulates as follows:

> "In addition to the representatives of members and alternates and the President, the meetings of the Board shall be open only to such staff members of the Fund as the President may, from time to time, designate for that purpose. The Board may also invite representatives of cooperating international organizations and institutions or any person, including the representatives of other Members of the Fund, to present views of any specific matter before the Board."

Rule 8 of the Rules of Procedure of the Executive Board is not applicable *mutatis mutandis* in this case. Indeed, when in May 2011 the Executive Board approved the TOR of the EC, it specifically determined the extent of the Committee's authority with regard to invitation of observers to its meetings.

B. The authority to invite observers

(a) Authority of the EC to grant observer status

The Committee is a subsidiary body of the Board, to which the EB may refer any question related to the evaluation functions in the Fund, for which the EB is responsible under the Agreement Establishing IFAD. In addition, the EC has the permanent responsibilities set out in the Terms of Reference and Rules of Procedure of the Evaluation Committee (EB 2011/102/R.47/Rev.1) which were approved by the Executive Board in May 2011.

According to the TOR of the EC, the authority of the Committee to invite observers at its meetings is limited to the Executive Board members who are not members of the Evaluation Committee. As a result, the EC has no capacity to entertain [State]'s request, as its capacity was limited by the Board.

(b) Authority of the President

We have also reviewed the possibility for the President to consider the request but must conclude that also the President's capacity in this matter is limited. At its sixty-second session in December 1997, the Executive Board gave a limited delegation to the President, authorizing him, at his discretion, to invite one observer to attend any particular session of the Board. Such observer is to be admitted upon the request of either a member State represented on the Board or a cooperating international organization or institution. The invitation is limited to only once per person and as indicated above, is limited to sessions of the Board. In other words, by its own terms this authorization is given for the sessions of the Executive Board only, not for subsidiary bodies.

In the absence of a delegation of the authority to invite representatives of non-member States to participate in the session of the Committee, it must be concluded that the Executive Board has reserved this power. We therefore consider that neither the Evaluation Committee, nor the President is authorized to decide on [State]'s request.

(c) Authority of the Executive Board

Given that the Executive Board neither delegated to the EC nor to the President the authority to invite non-IFAD members as observers, the matter of whether [State] (or any other non-IFAD member) may, or may not, attend as an observer at the meetings of the EC rests with the Board.

C. Conclusion

For the reasons discussed above, decisions regarding the participation of non-IFAD members to EC Meetings are within the competence of the Executive Board.

20 November 2012

(*c*) Internal communications concerning a non-member State's request to make a statement during the Governing Council (GC)

Rules concerning the participation of non-members at the sessions of the GC—A State whose membership application has been approved by the GC continues to be a non-member State until the deposit of its instrument of accession—A non-member State must be authorised by the Chairman of the GC to be able to make a statement in the GC—A non-member State must be invited by the President of the GC to designate an observer to participate in the session of the GC and its meetings

Dear [Name],

We understand that [State] wishes to make a statement at the GC after the approval of its membership.

According to article 13, section 1(c) of the Agreement Establishing IFAD (AEI),[*] States that are not listed in schedule 1, such as [State], may after approval of their membership by the GC, become parties to the AEI by depositing an instrument of accession. We understand that [State] will not be able to deposit its instrument of accession before the GC and therefore will not become a full fledged member of IFAD at the time the GC approves its application. As a non-member State, [State] will have the following options:

1. *Making a statement only* (excluding participation to the GC proceeding).

According to rule 27 of the Rules of Procedures of the GC, the Chairman of the GC *inter alia* directs the discussions and accords the right to speak. According to this rule, the Chairman, in the exercise of his function and under the authority of GC, may give the right to speak to the representative of [State].

2. *Observer.*

According to rule 43 of the Rules of Procedures of the GC, the Governing Council may invite any non-member State or grouping of States eligible for membership pursuant to article 3, section 1 of the AEI, to designate an observer to participate in the proceedings of the GC. The authority to invite non-member States has been delegated to the President in consultation with the Executive Board (resolution 77/6) and thereafter the Executive Board authorized the President to invite members States as observers (EB/31, 16 October 1987). Please note that even if the President invites [State] as observer, it does not imply that [State] will have the right to speak at the GC. Again, the observer will have to seek the right to speak from the Chairman of the GC in accordance with rule 27 of the Rules of Procedures of the Governing Council.

To sum up, it is important that the Secretariat informs [State] that if they wish to make a statement at the GC, they must be authorized by the Chairman. In addition, if they wish to participate in the session of the GC and meetings, they should inform the President who may invite them to designate an observer to the GC. Should the [representative of State] observer wish to make a statement, he/she must be given the right to speak by the Chairman of the GC.

10 February 2012

[*] United Nations, *Treaty Series*, vol. 1059, p. 191.

2. United Nations Industrial Development Organization

(Submitted by the Legal Adviser of the United Nations Industrial Development Organization)

(*a*) Internal e-mail message concerning a request for amendment of [Title] Grant Agreement

Express choice of law in a contract with the United Nations or its specialized agencies could imply or result in waiver of privileges and immunities and therefore is not accepted—Grant agreement, UNIDROIT principles and generally accepted principles of international law sufficient to address gaps—Applicable law to be decided by arbitral body—Article 33 (1) of UNCITRAL Rules—Article 33 of the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States

Reference is made to your e-mail of [date], which forwarded the comments from [Name], legal officer of the [subsidiary body of an international organization]. I wish to comment as follows.

1. [The Legal Officer] first raises the following question: "I am not aware of any legal principle preventing an international organisation to state in a contract that the interpretation of the contract will be done in the light of the law of country X".

2. The law and practice of the United Nations, including a specialized agency of the United Nations (like UNIDO), is quite clear on this subject; an express choice of national law in a contract is not accepted because it could imply or result in the waiver of the Organization's privileges and immunities. Please find attached a published opinion from the Office of Legal Affairs[1] of the United Nations, which may be forwarded to [Name] for his information.[*]

3. [The Legal Officer] also raises a separate point. After referring to the [Intergovernmental Organization]'s practice, he states that "a reference to some national contract law is *necessary* in case there would be a gap in the contract or a divergence of interpretation" [emphasis supplied].

4. We disagree. The Grant Agreement, the International Institute for the Unification of Private Law (UNIDROIT) Principles and generally accepted principles of international law are sufficient to address any gaps. Should a legal gap arise, however, an arbitral body would still have the authority to decide on the applicable law in accordance with the conflicts-of-law rules that apply to it. Please refer to the above-mentioned legal opinion from the United Nations Office of Legal Affairs, which refers to article 33(1) of the United Nations Commission on International Trade Law (UNCITRAL) Rules.[**]

5. Moreover, in the specific case of the Financial and Administrative Framework Agreement (FAFA) between the [Intergovernmental Organization] and the United Nations, to which UNIDO has acceded, it has been agreed that, in the event that a dispute cannot

[1] See *United Nations Juridical Yearbook, 1994* (United Nations publication, Sales No. 00.V.8), p. 449.

[*] Attachment not reproduced herein.

[**] Available from http://www.uncitral.org/.

be amicably settled, the arbitration shall be in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States.* These Optional Rules are based on the UNCITRAL Rules and provide in relevant part as follows:

> Applicable law
>
> Article 33
>
> 1. In resolving the dispute, the arbitral tribunal shall apply the rules of the organization concerned and the law applicable to any agreement or relationship between the parties, and, where appropriate, the general principles governing the law of international organizations and the rules of general international law.
>
> 2. This provision shall not prejudice the power of the arbitral tribunal to decide a case *ex aequo et bono*, if the parties agree thereto.

6. In conclusion, the text proposed by the UNIDO Office of Legal Affairs is consistent with the law and practice of the United Nations as well as the FAFA. In so far as UNIDO is concerned, there is no necessity to specify a national law in the contract.

[. . .]

(*b*) Internal e-mail message concerning guardianship/adoption by [Name] [State]

Whether guardianship establishes dependency status of children under the Staff Rules—Staff rule 106.15(b)(iii), a child for whom the staff member assumes legal responsibility as a member of the family may include a staff member's ward—Guardianship certificate together with documentary evidence of support would entitle staff member to receive dependency allowance

1. This is with reference to your e-mail of [date], regarding a staff member who has assumed guardianship of his brother's two minor children. At issue is whether the guardianship establishes the dependency status of the children under the staff rules. In particular, you ask for advice "as to whether the Organization may recognize the children and authorize the payments of dependency benefits in respect of the two children on the basis of staff rule 106.15(b)(iii)".

2. According to the relevant provisions of staff rule 106.15, in particular paragraph (b)(iii), a dependent child will include, where adoption is not possible, "a child for whom the staff member assumes legal responsibility as a member of the family". As with other dependent children (i.e. natural, adopted or step children), such a child should be under the age of 18 years or, if in full-time attendance at a school or university (or similar educational institution), under the age of 21 years. Further, the child must receive main and continuing support from the staff member, which is defined as more than one half of their total support.

3. My reading of staff rule 106.15(b)(iii) is that "a child for whom the staff member assumes legal responsibility as a member of the family" may include a staff member's ward, i.e. a child in respect of whom a staff member has been appointed legal guardian by a court

* Available from http://www.pca-cpa.org.

of competent jurisdiction. In the present case, the staff member has submitted a guardianship certificate, issued by the High Court in [City A], appointing him as the guardian of his nephew and niece until their age of majority (21 years). Although we have not seen the original, the certificate appears to be genuine and there is no obvious reason to doubt its authenticity.

4. As you point out, the guardianship certificate states that the children may not be taken beyond the jurisdiction of the court without prior permission except for occasional visits. The guardian must also inform the court promptly about any change in address of the children. The purpose of these legal requirements is to ensure that the court is able to maintain supervision over the guardianship. At any rate, the fact that the staff member resides in [City B] and the children in [State] has no impact on his duties, rights and liabilities as guardian. Under the law of [State] (section 24 of the Guardians and Wards Act of [year]), "[a] guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires". The staff member's duties as guardian thus include the provision of maintenance and financial support to the children, should they require it.

5. In my view, the guardianship certificate largely satisfies the requirements of staff rule 106.15(b)(iii) for recognition of the children as the staff member's dependents: as they are not orphans, the children cannot be adopted; as his nephew and niece, they are members of his family; and, as their guardian, he is legally responsible for them.

6. I say "largely satisfied" as your e-mail indicates that one important issue remains outstanding. Under staff rule 106.15(c) the staff member must still certify that he provides main and continuing support for the children and to this end produce "documentary evidence satisfactory to the Director-General". Should the staff member make the certification and produce the required documentary evidence, I believe that he would be entitled to receive dependency allowances in respect of the children in accordance with provisions of staff rule 106.16.

(*c*) Inter-office memorandum regarding a legal opinion on social security arrangements in respect of project personnel at [UNIDO International Centre]

[UNIDO International Centre] has no legal obligation to contribute to [State]'s social security system on behalf of its personnel—Inviolability of UNIDO premises—Mandatory contributions for social security schemes are a form of direct taxation—Personnel must be engaged and administered in accordance with UNIDO regulations, rules and directives and are responsible, as independent contractors, for their own social security arrangements—A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty

1. I refer to your e-mail of [date] concerning social security arrangements in respect of project personnel at the [(UNIDO) International Centre] in [City].

2. You ask for advice regarding an expert opinion commissioned from two professors of law at [City] University, dated [date] (the "opinion"), an English version of which was copied to this Office. The opinion concludes that [UNIDO International Centre] has no legal status other than that of UNIDO and that it enjoys the privileges and immunities

of a specialized agency in [State] but is not exempt from social security contributions in respect of its employees, who have a constitutional right to social security under [State] law.

3. According to the opinion and the information provided by [UNIDO International Centre], [State] legislation requires residents of the country to pay social security contributions for medical and pension rights, although certain exemptions exist for foreigners who are insured abroad. The legislation in question is the Social Insurance and Universal Health Insurance Law No. [number], which gives effect to the right to social security contained in article 60 of the [State] Constitution. [Name] explains that [UNIDO International Centre] personnel are employed under individual service agreements (formerly known as special service agreements) and either have medical and pension insurance in their home countries or, in the case of [State] nationals, contribute to the [State acronym] on their own, apparently stating that they are not employed. Although [UNIDO International Centre] has not received a request to pay [State] social security contributions, the Centre would like to know whether the professors' conclusion could present a problem for UNIDO and hence [UNIDO International Centre], and if so, how best to handle it.

4. This memorandum examines the correctness of the professors' analysis and conclusions, and in particular whether [UNIDO International Centre] is indeed under a legal obligation to contribute to the [State] social security system on behalf of its personnel. While we are not experts in [State] law, the conclusion of this Office is that [UNIDO International Centre] has no such obligation either under international law or [State] law. Before explaining why, I would like to comment on the unannounced visit that social security inspectors paid to [UNIDO International Centre] in [date], during which they requested information on individual employees.

5. Although the circumstances of the visit are not entirely clear, it should be borne in mind that the premises of UNIDO, including those of [UNIDO International Centre], are inviolable. This inviolability derives from the provisions of the Convention on Privileges and Immunities of the Specialized Agencies, 1947 ("the Convention"),[1] which the Government has undertaken to apply to the [UNIDO International Centre] project by virtue of the Declaration of [date] appended to the project document.[2] Article III, section 5, of the Convention stipulates that the premises of the specialized agencies (and hence [UNIDO International Centre]) shall be inviolable and that the property and assets of the specialized agencies (and hence [UNIDO International Centre]), wherever located and by whomsoever held, shall be immune from, *inter alia*, search and any other form of interference, whether by executive, administrative, judicial or legislative action. Thus, while [UNIDO International Centre] would obviously wish to cooperate with the host authorities, inspections of [UNIDO International Centre] offices by state officials require the permission of [UNIDO International Centre], if appropriate following consultation with Headquarters.

6. Turning to the opinion, the crux of the professors' argument is as follows:

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[1] United Nations, *Treaty Series*, vol. 33, p. 261.

[2] In terms of the Declaration, the Government "agrees to apply to the present project, *mutatis mutandis*[,] the provisions of the Revised Standard Agreement concluded between the United Nations and Specialized Agencies and the Government of the [State] on [date], at [City]". Article V of the Revised Standard Agreement provides in turn that the Government shall apply to specialized agencies, their property, funds and assets, and to their officials, including technical assistance experts, the Convention on Privileges and Immunities of the Specialized Agencies.

"Even though exemptions have been granted with clear provisions with regard to tax, the relevant conventions do not contain any provisions regarding exemption from social security obligations [emphasis added]. Therefore, the social security laws and rules, to which those working in [State] are subject, shall apply within the scope of the UNIDO—[UNIDO International Centre] project.

[. . .]

However, since there are the above explained privileges and immunities about UNIDO—[UNIDO International Centre] in the relevant international conventions, it is not possible to impose any sanctions if the requirements of the social security laws and rules are not fulfilled."

7. I do not share this line of reasoning for two main reasons. First, the professors draw an unwarranted distinction between income tax on the one hand and social security deductions on the other. The professors correctly point out that UNIDO and its assets, income and property are exempt from "all sorts of direct taxes" in [State] pursuant to the Convention. They also conclude that the fees and salaries received by [UNIDO International Centre] personnel, including technical assistance experts, are exempt from income tax. However, it is unclear from the opinion why social security contributions are not a tax from which [UNIDO International Centre] and its personnel are exempt. The United Nations, for example, has consistently taken the position that mandatory contributions for social security schemes under national legislation are a form of direct taxation on the United Nations and therefore contrary to the Convention on Privileges and Immunities of the United Nations, 1946.[3,4] This Office shares this view. By contrast, the professors assume—I would submit incorrectly—that social security payments are somehow distinguishable from taxes and that immunity has only been granted in respect of the latter.

8. My second reservation regarding the professors' opinion is that they overlook an important provision of the Trust Fund Agreement between UNIDO and the Government of the [State] of [date], which governs the funding and institutional arrangements of the [UNIDO International Centre] project and which remains in force. Article I, paragraph 4, of the Trust Fund Agreement stipulates that:

"4. The trust fund and the activities financed therefrom shall be administered by UNIDO in accordance with its applicable regulations, rules and administrative instructions or directives. Accordingly, personnel *shall be engaged and administered;* equipment, supplies and services purchased*; and contracts entered into in accordance with the provisions of such regulations, rules and directives* [. . .] [Emphasis added]"

9. As a matter of international law, therefore, [UNIDO International Centre] personnel must be engaged and administered in accordance with the regulations, rules and directives of UNIDO. This means that the conditions of service of [UNIDO International Centre] personnel, including the conditions relating to social security, should be determined with reference to rules of the Organization. In accordance with those rules, [UNIDO International Centre] personnel sign service agreements that confer on the subscriber the status of an individual contractor *vis-à-vis* UNIDO. As individual contractors [UNIDO International Centre] personnel are not considered to be staff members or employees of

[3] United Nations, *Treaty Series*, vol. 1, p 15 and vol. 99, p. 327 (corrigendum to vol. 1).

[4] See for example, *United Nations Juridical Yearbook, 2005* (United Nations publication, Sales No. E.08.V) p. 439 and *ibid*., *1998*, (United Nations publication, Sales No. E.03.V.5) p. 479.

UNIDO and are responsible for making their own insurance arrangements, such as those mandated by national law.

10. The professors indicate that the Trust Fund Agreement has been approved by the Grand National Assembly of the [State] and that it is directly executable in [State] and equivalent to a national law. If the Trust Fund Agreement has been incorporated into [State] law, then [State] law arguably recognizes that [UNIDO International Centre] personnel must be engaged and administered in accordance with the regulations, rules and directives of UNIDO. The question that arises, then, is whether the Trust Fund Agreement or the rules of UNIDO conflict with the general law of [State], including the constitutional right to social security, and if so, how that conflict may be resolved.

11. The opinion discusses the possibility of a conflict between an international convention or treaty and [State] law. According to [State] judicial precedent, generally recognized canons of interpretation are available to assist [State] courts in determining whether or not a convention will take precedence over national law. Citing the principle *lex specialis derogat legi generali*, the professors explain that "[t]he provisions that introduce privileges and immunities for [UNIDO International Centre] are primarily in the nature of special provisions and will apply in priority against general laws". A similar argument could be made with respect to article I, paragraph 4, of the Trust Fund Agreement, which is cited above: if there were a conflict between the special provisions in article I, paragraph 4, and the law of [State], then the same canon of interpretation might allow the special provisions to prevail. The professors do not, however, consider this possibility and only cite article I, paragraph 4, in passing.

12. The professors' opinion notwithstanding, we are not persuaded that there is any conflict between the Trust Fund Agreement or the rules of UNIDO and [State] law. Assuming that the information in the [acronym]'s PowerPoint presentation is correct, [State] law allows self-employed individuals to contribute to the social security system and exempts foreigners working in [State] who are adequately covered in their home countries. Broadly speaking, [State] law appears to accommodate the current set-up whereby [UNIDO International Centre] personnel are responsible, as independent contractors, for their own social security arrangements. If [UNIDO International Centre] personnel can contribute to the [State] social security system on their own and are paid fees that enable them to do so, then it is unclear how their constitutional right to social security would be infringed. The opinion does not answer this question but instead assumes that [UNIDO International Centre] personnel fall into the category of employees, a status they do not hold under the rules of UNIDO.

13. Furthermore, in terms of article 27 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986,[*] "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". Although the Convention has yet to enter into force, article 27 reflects an identical provision of customary international law, which governs treaty relations between UNIDO and the Government of [State]. Even if the provisions of article I, paragraph 4, of the Trust Fund Agreement were to conflict with a [State] norm

[*] See *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations*, vol. II (United Nations publication, Sales No. E.94.V.5) (Not yet in force).

(which, as I have indicated, is uncertain), the Government would remain bound by the Trust Fund Agreement on the international plane.

14. For these reasons, we conclude that [UNIDO International Centre] is not legally required to pay [State] social security contributions on behalf of its personnel. At any rate, if [UNIDO International Centre] were to make such contributions, any additional costs to the project would be borne by the donor (the Government) in terms of article III of the Trust Fund Agreement, which obligates the donor to meet the actual costs of the services specified in the project document.

(*d*) Inter-office memorandum regarding a claim by [a staff member] for retroactive dependency allowances in respect of his children

Staff rule 106.10(a) relates to a staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled—Discretionary decisions are subject to limited review in accordance with the abuse-of-discretion standard—Staff rule 106.10(A) does not prevent retroactive payment of the allowances claim—Compelling circumstances warrant making an exception

1. Reference is made to your inter-office memorandum (IOM) of [date] regarding the claim by [Name] for retroactive dependency allowances in respect of his dependent children. The staff member, who is a national of the [State A], submitted the claim to Human Resources Management (HRM) following a decision by the [State B] fiscal authorities to recover government grants mistakenly paid to his spouse. You ask for my opinion on whether the Organization is liable to pay the allowances claimed, taking into account that the United Nations Office in Vienna (UNOV) reimburses similar claims without any limitation on the number of years covered by the retroactive payments.

2. In his memorandum to HRM, dated [. . .], [the Staff Member] explains that his spouse drew [State B] family benefits in respect of both their children between [date] and [date], their second child having been born in [date]. Earlier this year, the [fiscal authority] demanded reimbursement of the benefits paid after [date], totalling [amount], "because, according to the Headquarters Agreement, employees of UNIDO and their family members are excluded from receiving social benefits from the equalization fund for family benefits" (second paragraph of [the Staff Member]'s memorandum). An appeal against that decision succeeded in part: the fiscal authorities issued a new decision on [date], requiring repayment of the sum of [amount], this being the amount in [State B] family benefits mistakenly paid out after [the Staff Member] joined UNIDO on [date]. [. . .]

3. The latest decision of the fiscal authorities appears to be well founded. In accordance with [State B] law, officials of UNIDO are not entitled to receive [State B] family benefits unless they are nationals of [State B] or other European states, or are stateless persons resident in [State B] [. . .] The legal situation in [State B] derives, *inter alia*, from section 39(b) of the Headquarters Agreement of UNIDO, which stipulates that:

> "Officials of the UNIDO and the members of their families living in the same household to whom this Agreement *applies shall not be entitled to payments out of the Family Burden Equalization Fund* or an instrument with equivalent objectives,* unless such persons are [State B] nationals or stateless persons resident in [State B]. [Emphasis added]"
>
> * The Family Burden Equalization Fund is a national fund from which [State B] family benefits are paid.

4. In view of the fiscal authorities' final decision, [the Staff Member] requests that he be granted dependency allowances in respect of his children retroactively from [the time he joined UNIDO]. Concerning the merits of his claim, it is undisputed that the staff member has a right to receive such allowances in future in accordance with staff rule 106.15. The only issue at stake is whether his entitlement should be recognized retroactively and if so, from what date.

5. On the question of retroactiveness of payments, staff rule 106.10(a) provides that:

> "(a) A staff member who has not been receiving an allowance, *grant or other payment to which he or she is entitled* shall not receive retroactively such allowance, grant or payment unless the staff member has made written claim:
>
> (i) In the case of the cancellation or modification of the staff rule governing eligibility, within three months following the date of such cancellation or modification;
>
> (ii) In every other case, *within one year following the date on which the staff member would have been entitled to the initial payment*. [Emphasis added]"

6. The purpose of staff rule 106.10(a) is to set a reasonable limit on the Organization's obligation to reimburse allowances and entitlements that are claimed late. If it is assumed that [the Staff Member] was entitled to claim dependency allowances as [of the time he joined UNIDO] in respect of his first child [. . .], and as of [date] in respect of his second child (i.e. when she was born), staff rule 106.10(a) would preclude retroactively backdating the allowances to those two dates. Instead, we understand that the usual practice in applying the rule would be to backdate the allowances by one year only, calculated from the date of the staff member's claim.

7. Although a strict application of staff rule 106.10(a) might lead to the partial rejection of [the Staff Member]'s claim, such a course of action would not be advisable. The International Labour Organization (ILO) Administrative Tribunal tends to treat decisions on retroactiveness of payments as discretionary decisions, which, like other discretionary decisions, are subject to limited review in accordance with the abuse-of-discretion standard. In Judgment No. 2411[1] the Tribunal had the following to say regarding decisions of this kind:

> Even when the Tribunal has dealt with express time-bar limitations it has nonetheless adopted a flexible attitude, saying that and that, *in certain circumstances*, "*justice requires that an exception should be made*" (see Judgment 451).
>
> In Judgment 53 the Tribunal found, as in other cases since, that "*all the circumstances of the case" should be taken into account, for instance to determine whether a reasonable time has elapsed*, "*including* inter alia *the* bona or mala fides *of the official, the nature of the error, the degree of negligence and [. . .] the hardship caused*".
>
> It has also been stated that, even in discretionary matters, "essential facts" should be taken into consideration and that "mistaken conclusions" cannot be drawn "from the facts" (see in particular Judgments 972, 1262 and 1384). These are basic legal principles. [Judgment No. 2411 at consideration 7, emphasis added]

[1] See ILO Administrative Tribunal, *In re Mr E.K. L.* v. *the European Patent Organisation (EPO),* Judgment No. 2411 (2 February 2005).

8. The circumstances of [the Staff Member]'s case would justify making an exception to staff rule 106.10(a) and granting him dependency allowances retroactively to 2008 and 2010, respectively. In particular:

– the staff member's late claim for dependency allowances results from a series of administrative errors on the part of the [State B] authorities and from their subsequent decision to seek recovery of the overpayments;

– responsibility for the situation cannot be attributed to the staff member or his spouse: they are not expected to be familiar with provisions of the Headquarters Agreement and acted diligently and in good faith throughout;

– backdating the dependency allowances by one year only would unduly benefit the Organization at the expense of the staff member: through no fault of his own, he would be out of pocket by a considerable sum and would receive less favourably treatment than other staff members with dependent children;

– backdating the dependency allowances by one year only would also have the effect of unfairly penalizing the staff member for the fact that his spouse exercised her right of appeal under [State B] law: had the fiscal authorities' initial decision been left unchallenged, the staff member would have been able to submit his claim for dependency allowances several months earlier, but would simultaneously have been out of pocket by an additional [amount], which was wrongly claimed back in the initial decision.

9. In addition to this, it is arguable that the rule limiting retroactiveness of payments is not applicable in the present case. It is recalled that staff rule 106.10(a) relates to "[a] staff member who has not been receiving an allowance, grant or other *payment to which he or she is entitled*" (emphasis added). The rule thus governs situations in which the staff member is actually *entitled* to the allowance, grant or other payment but for some reason submits a late claim. It is doubtful that this precondition is satisfied here. In accordance with the Staff Regulations and Rules, [the Staff Member] was not entitled to full dependency allowances in respect of his children as long as his spouse was being paid the government grants (*see* staff regulation 6.9(c) and paragraph C of Annex I to the staff regulations, which aim to avoid duplication of benefits and to achieve equality between staff).[2] His entitlement only arose when the [State B] benefits were withdrawn. The assumption that he could claim dependency allowances as of [date] in respect of his first child, and as of [date] in respect of his second, is therefore incorrect. In fact, he could only reasonably claim the allowances, whether on a prospective or retroactive basis, after his legal representative had received the fiscal authorities' final decision on [date]. This is what he duly did.

10. In light of the above, we conclude that staff rule 106.10(a) does not prevent the retroactive payment of the allowances claimed by [the Staff Member] and, even if it did, that compelling circumstances warrant making an exception to the rule. [. . .]

[2] While in receipt of government grants the staff member could only claim the difference, if any, between the government grant and the UNIDO dependency allowance (see staff rule 106.16(d)).

3. Comprehensive Nuclear-Test Ban Treaty Organization

(*a*) Inter-office memorandum to the Chief of Procurement regarding the interpretation of the Rule of Origin for Services of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (Commission)

Factors for assessment and evidence of compliance with Rule of Origin when portion of services may be performed by a Non-Signatory State—Definition of "origin"—Physical place of origin—Legal place of origin—Provision of goods/services allowed from a non-signatory State under certain circumstances—Risk analysis evaluation

The request for legal advice

1. The Procurement Section has requested legal advice from the Legal Services Section concerning the interpretation of the Commission's Rule of Origin for Goods/Services (Memorandum No. [. . .], REF: Purchase Order No. [. . .], dated [. . .]).

2. The request for legal advice relates to the renewal of Purchase Order [. . .], under which [Company X] in [Signatory State XYZ], as a sole source supplier, provided support for Company X licenses. The Purchase Order was awarded to [Company X] in [Signatory State XYZ], and the invoice was received from and paid to [Company X] in [Signatory State XYZ]. In the course of the renewal of the Purchase Order it came to the attention of the Procurement Section that the representative of [Company X] in [Signatory State XYZ] for this Purchase Order communicated with the Commission with contact details in a State which has not signed the Comprehensive Nuclear-Test-Ban Treaty* ("Non-Signatory State").

3. The Procurement Section sought clarifications with [Company X] in [Signatory State XYZ]. According to [Company X], [Company X] has a global support organization, with engineers located in many countries (including the Non-Signatory State) who work with a multi-shift model in providing a 24/7 support to its customers. Whereas generally contracts for the provision of services are concluded by the [Company X] subsidiary which is located in the country of the domicile of the customer, in this case [Company X] in [Signatory State XYZ], the provision of some products or services may be supported by resources from other [Company X] subsidiaries, including [Company X] in the Non-Signatory State.

4. In the Memorandum, the Procurement Section notes that the Commission's standard Instructions to Bidders, attached to Requests for Quotations (RFQ), contain a paragraph which provides that:

> "The goods and services (if any) to be rendered under the Purchase Order shall have their origin in the States Signatories of the Comprehensive Nuclear-Test-Ban Treaty (CTBT), the list of which is attached to this RFQ. For purposes of this paragraph, "the origin" means the place from where the materials, goods and/or from which the services are supplied."

* A/50/1027. Not yet in force.

5. The Procurement Section therefore seeks legal advice regarding the decisive factors for assessment and acceptable proof/evidence of compliance with the Commission's Rule of Origin, particularly where, as here, software maintenance/support services have to be provided on a 24/7 basis through a global support network, while the Contractor ([Company X] in [Signatory State XYZ]), at the time of contracting, cannot confirm or deny whether a portion of the services may be performed by another Company X subsidiary in a Non-Signatory State.

The status of the Rule of Origin

6. The above-mentioned paragraph in the Instructions to Bidders regarding the country of origin of goods and services does not appear in the CTBT, or the Resolution establishing the Commission, or the Commission's Financial Regulations and Rules, nor is it spelled out or even mentioned in the Commission's reports or other official documents. Therefore, strictly speaking, the rule embodied in this paragraph is not a rule in a statutory sense, but a rule evolved in practice through consistent adherence by the Commission in its procurement of goods and services.

7. The only place where the issue (but not the rule) was referred to is an Information Paper prepared by the Commission's Provisional Technical Secretariat (PTS) (The 1999 Procurement Expenditure Country-by-country Report, CTBT/PTS/INF.177, dated 25 June 1999). During the twelfth session of Working Group A, the PTS was requested to provide a report for delegations on the countries of origin of the vendors which were awarded contracts or purchase orders from the PTS. The PTS prepared a spreadsheet displaying the requested information for the period 1 January through 16 June 1999 for contracts or purchase orders above USD 10,000. The following 14 countries were listed:

[Signatory States]

However, the report of Working Group A for its twelfth session did not mention its request for information or the above PTS Information Paper. Nor was this ever referred to in any other official documents of the Commission. It is not clear for what reason Working Group A requested the information, or whether it discussed the Information Paper at all, or why it did not take up the matter anymore. Given the fact that all the above 14 countries had signed the CTBT in 1996 and were therefore all States Signatories during the period covered by the Information Paper, it is impossible to know how Working Group A or the Commission would have reacted if one of the countries had been a Non-Signatory State. In other words, current evidence is *inconclusive* of the Commission's attitude towards the Rule of Origin.

8. Nevertheless, the Rule of Origin, as applied in practice, is in the Commission's best interest, for three main reasons. First, it has been the Commission's standard and consistent policy that certain benefits, such as access to, and civil and scientific application of, verification data and analyses, are available only to States Signatories. Secondly, the CTBT, the Resolution and the Commission's Staff Regulations and Rules all provide that only nationals of the States Signatories can be appointed as staff members of the Commission. Thirdly, only in the States Signatories can the Commission's international personality, legal status, and privileges and immunities be best recognised and protected.

9. It should then be assumed that the Rule of Origin as it currently stands is, both in form and in substance, what the Commission (albeit tacitly) approves and can therefore only be interpreted and applied, but not changed, by the PTS.

Two valid interpretations of the Rule of Origin

10. In view of the above, we find that the current Rule of Origin is open to two equally possible and equally valid legal interpretations. These two interpretations are, for the sake of convenience, termed here as Interpretation A and Interpretation B. Interpretation A would prohibit any services from being supplied from a Non-Signatory State, whereas Interpretation B would allow services to be supplied from a Non-Signatory State if certain conditions are fulfilled. The crux of the matter is how one should understand the definition of "Origin" in the last part of the Rule, namely, that "the origin" means the place from where the materials, goods and/or from which the services are supplied'.

10.1 Alternative Interpretation A: no provision of goods/services allowed from a Non-Signatory State

The definition of "Origin" can be understood as meaning 'the place from where the materials, goods and/or from which the services are physically supplied'. On this understanding, whatever the legal arrangement, goods/services must be physically supplied from a State Signatory. That is to say, the goods/services contracted by the Commission must be supplied through equipment and by personnel located only in a State Signatory. Thus, even if the contractor may be an entity incorporated and domiciled in a State Signatory, but if such an entity, or its parent entity, has a composite global corporate structure under which goods/services, or portions of goods/services, may be supplied by or through a subsidiary/subsidiaries incorporated and/or domiciled in a Non-Signatory State, the Commission can receive supply of goods/services only from those subsidiaries located in a State Signatory, otherwise the contractual relationship must be terminated.

10.2 Alternative Interpretation B: provision of goods/services allowed from a Non-Signatory State under certain circumstances

In contrast, the definition of "Origin" can also be understood as meaning "the place from where the materials, goods and/or from which the services are legally supplied". In this case the focus will no longer be whether the relevant goods/services are physically supplied from a State Signatory, and the corporate structure of the contractor or that of its parent will become irrelevant. What is decisive will be whether the goods/services are supplied as a matter of *law*, not whether such goods/services are supplied as a matter of *fact*. For this purpose, goods/services are legally supplied from a State Signatory if the following three conditions are satisfied:

(1) The contract/purchase order for goods/services is awarded only to an entity which is incorporated and domiciled in a State Signatory;

(2) The invoice(s) for payment for the goods/services under the contract is/are received only from and paid only to this entity, and no other entity; and

(3) Under the contract, it is only this entity, and no other entity, which is the contractual counterpart of the Commission and which assumes sole responsibility and liability towards the Commission with regard to the goods/services; and, should any dispute arise under the contract, again it is only this entity that will settle the dispute with the Commission.

In other words, the legal relationship for the procurement and supply of goods/services takes place entirely between the Commission and an entity in a State Signatory, which, legally, will be the *supplier* of goods/services under the contract. As the Commission receives, and pays for, goods/services solely from an entity in a State Signatory; as this entity assumes sole legal accountability for such goods/services; and as no other entity, wherever located, can be held accountable for the goods/services in question, then it must be concluded that the goods/services are *legally* supplied from a State Signatory. The fact that the goods/services may actually and physically be supplied from an entity located in a Non-Signatory State becomes irrelevant. The reason is simple: since this entity is not the *supplier* of goods/services under the contract and thus in law, then the goods/services cannot be legally *supplied* by it.

11. As far as the current case of [Company X] in [Signatory State XYZ]/[Company X] in a Non-Signatory State is concerned, under Interpretation A, the Commission *cannot* receive services from [Company X] in the Non-Signatory State; but under Interpretation B, the Commission *can* receive services from [Company X] in the Non-Signatory State so long as [Company X] in the Signatory State remains the contractual partner of the Commission.

Conclusion

12. The two above interpretations are equally valid under the Commission's Rule of Origin as it is currently phrased. However, given the current high degree of globalisation, together with pressing economic considerations, it is becoming increasingly common for businesses to develop diversified and flexible corporate structures. This is especially true of the IT industry, for which national boundaries do not exist and whose standard mode of operation is working remotely. It should also be noted that the Commission's Rule of Origin contains no restriction to the effect that the supply of services must be performed actually by individuals who are *nationals* of States Signatories, which in any event would be an essentially unimplementable and unenforceable restriction. Therefore, it is recommended that Interpretation B be followed, within certain constraints discussed below.

13. The application of Interpretation B cannot be blindly followed in the abstract: it must be evaluated in the light of technical and security considerations so as not to expose the Commission's IT system to the risk of being compromised by services supplied in bad faith in/from a Non-Signatory State. Such an evaluation should consist of a risk analysis covering at least the following components:

(1) The services provided by an entity or subsidiary in/from a Non-Signatory State are only of a supportive and auxiliary nature, and in any case should not be more than only a minor portion of the total services supplied by the entity with which the Commission enters into the contract. In other words, the entity or subsidiary in/from the Non-Signatory State shall not provide services so essential and extensive, or otherwise play such a dominant role, as to render the entity which enters into contract with the Commission a mere 'front';

(2) An entity or subsidiary in/from a Non-Signatory State shall not have physical access to the Commission's IT system; and

(3) Further security elements as may be determined by the Commission's IT personnel.

23 November 2012

(*b*) Legal opinion on the status of the resolution establishing the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO)*

Historical background, purpose and functions of the Preparatory Commission—Nature and status of the General Assembly resolution establishing the Preparatory Commission—Interpretation of the resolution under article 31 of the Vienna Convention on the Law of Treaties, 1969—Definition of treaty—Designation as a "resolution" is irrelevant to the determination of its nature—Practice by the Preparatory Commission's 183 member States reflects adherence to the terms of the resolution—Ordinary meaning of the express terms of the resolution in respect of rights and obligations ("shall") designates obligatory conduct—Failure to register a treaty under Article 102 of the Charter does not imply that the instrument is not a treaty, but that it cannot be invoked before a United Nations organ—Preparatory Commission meets criteria of the three streams of doctrinal debate concerning the legal basis for international legal personality of international organizations—International Court of Justice has held parties to the express terms of an instrument, irrespective of assertions that the instrument was not binding—Significance of the object and purpose of the resolution and achievement of the Preparatory Commission's mandate—Obligation of States signatories pursuant to article 18 of the Vienna Convention not to defeat the object and purpose of a treaty pending its entry into force includes their duty to comply with the resolution to enable the Preparatory Commission to fulfil its mandate—The resolution constitutes an international agreement, legally binding upon States Signatories of the Comprehensive Nuclear-Test-Ban Treaty

1. Introduction

In 1996, shortly after signing the Comprehensive Nuclear-Test-Ban Treaty** (CTBT or Treaty), States Signatories "decided to take all necessary measures to ensure the rapid and effective establishment of the future Comprehensive Nuclear-Test-Ban Treaty Organization" (CTBTO) and adopted a resolution establishing the Preparatory Commission (CTBTO Preparatory Commission or Commission) for the CTBTO. The mandate of the Commission is to carry out preparations for the effective implementation of the CTBT at its entry into force and the first session of the Conference of the States Parties; the procedure and numerous tasks to be completed are stipulated or indicated in the resolution's annex.

The following opinion has been prepared to respond to a query as to the status of the resolution as a legally-binding instrument, endowing the Commission with international legal personality and the power to adopt decisions binding upon its member States.

* CTBTO, document CTBT/MSS/RES/1 of 17 October 1996. Available from: http://www.ctbto.org.

** A/50/1027. Not yet in force.

2. Historical background

Upon the adoption of the text of the CTBT by the United Nations General Assembly on 10 September 1996,[1] two parallel processes were set in motion: the first was the opening for signature of the Treaty by the United Nations Secretary-General as its Depositary on 24 September 1996; and as a consequence the second process was the establishment of the Preparatory Commission referred to in the Treaty. At a meeting on 19 November 1996, States Signatories to the CTBT adopted the resolution establishing the Preparatory Commission for the CTBTO (Resolution) and its annex, the text on the establishment of a Preparatory Commission for the CTBTO (Resolution Annex).[2]

The status of the Commission as an organization distinct from the CTBTO itself is stipulated in the Resolution Annex, the founding document and constituent instrument of the Commission. Paragraph 7 provides that the Commission "shall have standing as an international organization, authority to negotiate and enter into agreements and such other legal capacity as necessary for the exercise of its functions and fulfillment of its purposes". Paragraph 22 of the Resolution Annex further provides that the "host country" shall accord the Commission "as an international organization" such legal status and privileges and immunities as are necessary for the fulfillment of its object and purpose.

The following day, 20 November 1996, the United Nations Secretary-General convened the first session of the Commission and the Commission commenced its work. As of 2013, the Commission continues the stipulated activities while the CTBT lacks just eight more specific ratifications[3] for it to enter into force. In the normal course of its activities the Commission meets in regular sessions, attended by Representatives duly accredited by its 183 member States, to: adopt its decisions (including the annual budget and scale of assessments); authorise the conclusion of international agreements with third parties (including States and other international organisations); and review the cumulative expenditure of over USD one billion on constructing, maintaining and provisionally operating the International Monitoring System (IMS) and International Data Center (IDC) and preparing for on-site inspections as elements of the regime to verify compliance with the CTBT at its entry into force.

3. The issue

The establishment of the CTBTO Preparatory Commission followed a format and process similar to those of previous preparatory commissions established in the past by States,[4] in particular those for the United Nations 1945–1946,[5] the International Atomic

[1] General Assembly resolution 50/245 of 10 September 1996.

[2] CTBTO, document CTBT/MSS/RES/1 of 19 November 1996, and annex.

[3] By China, Democratic People's Republic of Korea, Egypt, India, Islamic Republic of Iran, Israel, Pakistan and the United States of America. See article XIV(1) of the CTBT.

[4] Henry G. Schermers and Niels M. Blokker, *International Institutional Law*, 5th ed. (Martinus Nijhoff Publishers, 2011), sections 1618–1620.

[5] See, *Report of the Preparatory Commission of the United Nations,* document PC/20 dated 23 December 1945 and *Documents of the United Nations Conference on International Organization (UNCIO)*, vol. 15 (1945), pp. 512–513.

Energy Agency (IAEA) 1956–1957[6] and the Organisation for the Prohibition of Chemical Weapons (OPCW) 1993–1997.[7] In fact, the Resolution establishing the 1996 CTBTO Preparatory Commission is nearly identical in terms of format, process and institutional tasks with that which established the 1993 OPCW Preparatory Commission,[*] as they were both drafted nearly contemporaneously by many of the same delegates in the Conference on Disarmament in Geneva. However, the technical tasks assigned to the CTBTO Preparatory Commission are substantively very different, encompassing significant global activities and involving expenditure far beyond those of any of its predecessors.

A very unique purpose of the CTBTO Preparatory Commission is the technical task of fulfilling the CTBT requirements by constructing (or otherwise establishing) and provisionally operating (in test mode) the 337 monitoring facilities comprising the IMS in the Treaty-stipulated locations in 89 countries (plus one to be determined)[8] and the IDC in Vienna.

Pursuant to the Resolution Annex[9] and Commission decisions,[10] the modalities for the cooperation between the PTS and States hosting IMS facilities ("Host States") are set out in a "facility agreement or arrangement" to be concluded with each of the 89 Host States, based on a model agreement/arrangement which *inter alia* accords privileges and immunities to the Commission. In addition, the Commission organizes technical assistance, capacity-building and other events in all its member States. For those purposes, agreements providing for the recognition of privileges and immunities of the Commission are concluded with the host countries. In both cases, reference is made to the *mutatis mutandis* application to the Commission of the Convention on Privileges and Immunities of the United Nations, 1946.[**]

Over the course of time the Commission's conduct of extensive and global activities in dozens of countries has brought to the fore a legal issue related to the recognition of its status and the enjoyment of privileges and immunities. Such an issue may have existed in respect of previous preparatory commissions but was never apparent during their relatively short lifetime and amidst their more limited, less operational activities (primarily drafting

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[6] International Atomic Energy Agency (IAEA), Statute of the IAEA, 1956, annex 1, available from http://www.iaea.org/About/statute.pdf (accessed on 31 December 2012); and Paul C. Szasz, *The Law and Practices of the International Atomic Energy Agency,* Legal Series No. 7 (Vienna, IAEA, 1970, STI/PUB/250), pp. 47–59.

[7] Lisa W. Tabassi, *OPCW: The Legal Texts* (The Hague, T.M.C. Asser press, 1999), pp. 523–530; and Johan Rautenbach and Lisa W. Tabassi, "Legal Aspects of the Preparatory Commission for the OPCW as an International Organisation," in Ian Kenyon and Daniel Feakes (eds.), *The Creation of the Organisation for the Prohibition of Chemical Weapons: A Case Study in the Birth of an Intergovernmental Organisation* (The Hague, Cambridge University Press, 2007), pp. 69–82.

[*] For the text of the resolution establishing the OPCW Preparatory Commission (generally referred to as, the "Paris Resolution") see, OPCW *Legal Series*, (PC-OPCW 1), 1994.

[8] Annex 1 to the CTBT Protocol, tables 1-A, 1-B, 2-A, 2-B, 3 and 4.

[9] Resolution Annex, paras. 12(b), 14 and 22; and appendix, tasks related to paragraph 14.

[10] CTBTO, documents CTBT/PC/I/22 dated 13 March 1997; CTBT/PC/II/1 dated 15 May 1997; CTBT/PC-5/1/Rev.1 dated 16 April 1998; CTBT/PC-6/1/Rev.1 dated 19 August 1998; CTBT/PC-12/1 dated 28 August 2000; CTBT/PC-14/1 dated 30 April 2001; CTBT/PC-19/1 dated 19 November 2002 and annex II, paragraph 13.

[**] United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

various institutional documents and recommendations) carried out in the territory of the host State under a headquarters agreement.

The Commission has occasionally faced a view that the Resolution is not legally binding, but only politically binding,[11] and that consequently the Commission cannot be recognised as a legal entity in a national jurisdiction or treated accordingly.

4. The question

Is the Resolution a legally binding instrument? Its terms are silent on this point. The Resolution does not provide any requirements for entry into force or means of dispute settlement, is not signed and was never registered as an international agreement under Article 102 of the Charter of the United Nations. On the other hand, the Resolution Annex does stipulate membership of the Commission ("all States which sign the Treaty").[12] It also specifies the duration of the Commission ("The Commission shall remain in existence until the conclusion of the first session of the Conference of the States Parties").[13] This, combined with the provisions of articles II(13) and XIV(1) of the CTBT, entails that the Commission must exist and exercise its functions for *at least* two years from 24 September 1996. Currently it has been in existence for 16 years.

The nature and status of the Resolution, which has been considered by one commentator as a supplementary treaty to the CTBT,[14] will be fully discussed in the following sections, which will compare the definition of "treaty" under the 1969 Vienna Convention of the Law of Treaties with the Resolution, apply the canons of interpretation codified in the Vienna Convention, and examine the relevant jurisprudence of the International Court of Justice. It will be concluded that the Resolution is indeed a legally-binding instrument.

5. Application of the 1969 Vienna Convention on the Law of Treaties

5.1 Definition of "Treaty"

Article 2 of the Vienna Convention on the Law of Treaties, 1969[*] (generally accepted as constituting a codification of customary international law) defines "treaty," in the generic sense, as follows:

Article 2. Use of terms

1. For the purposes of the present Convention: (a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

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[11] See for instance Masahiko Asada, "CTBT: Legal Questions Arising from its Non-Entry-into-Force", *Journal of Conflict & Security Law*, vol. 1, No. 7 (2002), pp. 93–122 at 106, fn. 73. In his article Asada considers the Resolution as a political document not subject to parliamentary review.

[12] Resolution Annex, para. 4.

[13] *Ibid*., para. 21.

[14] Anthony Aust, *Modern Treaty Law and Practice,* 2nd ed. (Cambridge, Cambridge University Press, 2007), p. 176.

[*] United Nations, *Treaty Series*, vol. 1155, p. 331.

Taking that into consideration, to start with, the Resolution satisfies all the criteria contained in the definition. The Resolution:

(*a*) constitutes an agreement by its terms (*inter alia*, employing throughout the imperative form "shall"; establishing obligations; establishing a sanction (loss of voting rights for late payment of assessed contributions));

(*b*) was adopted by States;

(*c*) is in written form; and

(*d*) is governed by international law (as it was adopted by States as sovereign entities on the international plane).

Its designation as a "Resolution", in and of itself, has no bearing on the determination of its nature, as provided by the above definition in the Vienna Convention, which reflects universally accepted practice and has been confirmed by the jurisprudence of the International Court of Justice. As one commentator finds, "every international organization is established on the basis of a treaty. In exceptional cases, resolutions adopted by an international conference have sufficed for the setting up of an organization. In law, this may be deemed an agreement in simplified form, possessing the force of a treaty".[15]

Critical to the differentiation of treaties from non-binding instruments is the intention of the States concerned.[16] To identify the intention of the parties, it will be necessary to have recourse to "the drafting history, the language of the agreement and the circumstances of its conclusion as well as the subsequent practice (e.g., documents submitted for registration under Article 102 of the United Nations Charter). In contrast, the designation and the form of the act as well as the failure to register [is] considered irrelevant. The same holds true for the presence of signatures since it does not necessarily denote a legally binding consent [. . .]".[17] Other commentary has indicated that, "If the parties have not made their intention to enter into legal relations—or the lack of such intention—explicit (e.g., with a ratification clause), the determination of the legally binding character of the respective instrument has to be based on indications". Commentary on the Vienna Convention records that the drafters, to distinguish international agreements from political instruments, contemplated adding to the definition of "treaty" the element "intended to create

[15] Michel Virally, "Definition and Classification of International Organizations: A Legal Approach," in Georges Abi-Saab (ed.), *The Concept of International Organization* (1981) p. 52, cited in Masahiko Asada, CTBT: Legal Questions Arising from its Non-Entry-into-Force", p. 109. For a discussion and listing of such organisations see, Henry G. Schermers and Niels M. Blokker, *International Institutional Law*, sections 34–35 and 1620.

[16] See for example, Oliver Dörr and Kirsten Schmalenbach (eds.), *Vienna Convention on the Law of Treaties: A Commentary* (Heidelberg, Springer, 2012), pp. 39–40; Christine Chinkin, "A Mirage in the Sand? Distinguishing Binding and Non-Binding Relations between States", *Leiden Journal of International Law*, vol. 10, No. 2 (June 1997), pp. 223 and 241; and Anthony Aust, "The Theory and Practice of Informal International Instruments", *International and Comparative Law Quarterly*, vol. 35, No. 4 (October 1986), pp. 787 and 800–806.

[17] Jan Klabbers, *The Concept of Treaty in International Law* (The Hague, Kluwer Law International, 1996), p. 75.

rights and obligations". Such words were not included as the Drafting Committee concluded that the words, "governed by international law", embraced the element of intent.[18]

5.2 Interpretation of the Resolution

The rights and obligations created by the Resolution as evidence of intent can be addressed through applying the canons of interpretation codified in the Vienna Convention:

> *Section 3. Interpretation of treaties*
> *Article 31. General rule of interpretation*
>
> 1. A treaty shall be interpreted in good faith in accordance with the *ordinary meaning* to be given to the terms of the treaty *in their context* and *in the light of its object and purpose*.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
>
> (*a*) *any agreement relating to the treaty* which was made between all the parties in connection with the conclusion of the treaty;
>
> (*b*) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
>
> 3. There shall be taken into account, together with the context:
>
> (*a*) *any subsequent agreement* between the parties regarding the interpretation of the treaty or the application of its provisions;
>
> (*b*) *any subsequent practice* in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
>
> (*c*) any relevant rules of international law applicable in the relations between the parties.
>
> 4. A special meaning shall be given to a term if it is established that the parties so intended. [emphasis added]

5.2.1 "Ordinary meaning"

In terms of ordinary meaning, the striking feature of the text of the Resolution is that it employs throughout the imperative form "shall" (rather than "will" or "may") without any qualification or conditions. The provisions of the Resolution are not phrased in hortatory or discretionary terms and are not statements of facts or policy which one would ordinarily find in a non-binding instrument.

The Resolution stipulates:

> "There is hereby established the Preparatory Commission . . .";[19]
>
> "The seat of the Commission shall be . . .";[20]

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[18] Oliver Dörr and Kirsten Schmalenbach (eds.), *Vienna Convention on the Law of Treaties: A Commentary*, pp. 39–40.

[19] Resolution Annex, para. 1

[20] *Ibid*., para. 3.

"The Commission shall be composed of all States which sign the Treaty . . .";[21]

"The costs of the Commission and its activities [. . .] shall be met annually by all States Signatories, in accordance with the United Nations scale of assessment . . .";[22]

"A State Signatory which has not discharged in full its financial obligations to the Commission within 365 days of receipt of the request for payment shall have no vote in the Commission, until such payment is received . . .";[23]

"All decisions of the Commission should be taken by consensus" [or failing that] voting . . . ;[24]

"The Commission shall have standing as an international organization . . .";[25]

"The Commission shall: (a) Elect its Chairman and other officers, adopt its rules of procedure, [. . .]; (b) Appoint its Executive Secretary; (c) Establish a provisional Technical Secretariat [. . .]; (d) Establish administrative and financial regulations in respect of its own expenditure and accounts . . .";[26]

"The Commission shall undertake, inter alia, the following tasks [. . .] requiring immediate attention after entry into force of the Treaty . . .";[27]

"The Commission shall undertake all necessary preparations to ensure the operationalization of the Treaty's verification regime at entry into force, pursuant to article IV, paragraph 1, and shall develop appropriate procedures for its operation . . .";[28]

"The Commission shall supervise and coordinate, in fulfilling the requirements of the Treaty and its Protocol, the development, preparation, technical testing and, pending their formal commissioning, provisional operation as necessary of the [IDC and IMS] . . .";[29]

"The Commission shall make all necessary preparations, in fulfilling the requirements of the Treaty and its Protocol, for the support of on-site inspections from the entry into force of the Treaty . . .";[30]

"Rights and assets, financial and other obligations and functions of the Commission shall be transferred to the [CTBTO] at the first session of the Conference of the States Parties . . .";[31]

"The Commission shall remain in existence until the conclusion of the first session . . .";[32]

"The Commission as an international organization, its staff, as well as the delegates of the States Signatories shall be accorded by the Host Country such legal status, privi-

[21] *Ibid*., para. 4.
[22] *Ibid*., para. 5(a).
[23] *Ibid*., para. 5(b).
[24] *Ibid*., para. 6.
[25] *Ibid*., para. 7.
[26] *Ibid*., para. 8.
[27] *Ibid*., paras. 10 and 11.
[28] *Ibid*., para. 13.
[29] *Ibid*., para. 14.
[30] *Ibid*., para. 15.
[31] *Ibid*., para. 20.
[32] *Ibid*., para. 21.

leges and immunities as are necessary for the independent exercise of their functions in connection with the Commission and the fulfilment of its object and purpose."[33]

The ordinary meaning of the terms is clear, unequivocal and stated in the imperative. Particularly notable from those terms are:

– The automaticity of membership in the Commission, which is not discretionary and establishes legal relations between States Signatories and the Commission;

– Payment of assessed contributions must be mandatory as otherwise it would not be possible for a State to fall into "arrears";[34] and

– The establishment of rights (e.g., participation in the Commission and its activities; voting); and

– The establishment of obligations (e.g., payment of assessed contributions; the tasks to be carried out; the grant of privileges and immunities).

In contrast, a text intended to be discretionary would have been drafted in other terms. The Resolution would have, for example, *called upon* States Signatories, or those in a position to do so, to participate in the preparatory process. This was not the case.

5.2.2 "In their context"

Article 31(2) of the Vienna Convention provides that:

> "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) *any agreement relating to the treaty* which was made between all the parties in connection with the conclusion of the treaty".

In this respect it is noted that the text of the Resolution Annex was drafted contemporaneously with the text of the CTBT in the Conference on Disarmament in Geneva. The CTBT makes reference to the Commission and the Resolution makes reference to tasks to be undertaken "in accordance with the Treaty". This establishes an inextricable linkage between the two instruments and constitutes the context.

5.2.3 "In the light of its object and purpose"

The object and purpose of the Resolution, as stated in its preambular recitals, are "to take all necessary measures to ensure the rapid and effective establishment of the future CTBTO" and "to this end to establish a Preparatory Commission".

The object is further elucidated through the tasks assigned to the Commission, *inter alia*: making arrangements for the first session of the Conference of the States Parties; developing standard models; negotiating agreements, arrangements and guidelines to be approved at the first session; developing the required operational manuals; acquiring and testing the on-site inspection equipment; developing training programmes; and other tasks "requiring immediate attention at entry into force of the Treaty".

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[33] *Ibid*., para. 22.

[34] The updated list of States which are in arrears and have lost their voting rights is published on the Commission's website available from: http://www.ctbto.org (accessed on 31 December 2012). No State has protested being characterized as such.

5.2.4 "Subsequent agreements" and "subsequent practice" by States

As provided in article 31(3) of the Vienna Convention, interpretation of the Resolution will take into account subsequent agreements or subsequent practice by States.

In that respect, facility agreements/arrangements have been concluded by the Commission with 43 of its member States in accordance with the Resolution and the model adopted by the Commission, taking into account the provisions of the CTBT. Active negotiations are underway with an additional 19 member States to conclude such agreements/arrangements. Of the 89 States explicitly required to host IMS monitoring facilities under the Treaty, only six have communicated that they will be unable to enter into an agreement with the Commission before entry-into-force of the Treaty.

Subsequent practice by States reflects broad adherence to the terms of the Resolution. Assessed contributions are paid at the level of approximately 90 per cent annually; data is being transmitted to the IDC at nearly the target rate decided by the Commission; the IDC is operating following the CTBT terms; establishment of the IMS is nearly completed; and significant appropriations have been allocated to develop the on-site inspection mechanism.

As evidence of *opinio juris,* at least one member State (United Kingdom) published the Resolution in its Treaty Series.[35]

Of the 43 facility agreements/arrangements concluded so far, 17[36] have been registered by the member States with the United Nations as international agreements falling within the scope of Article 102 of the Charter of the United Nations. Some of those member States[37] have adopted, or are in the process of adopting, national legislation or other measures to give effect to the respective facility agreement/arrangement, enabling the Commission to import tax- and duty-free and exempting from customs restrictions the equipment needed for the construction, upgrading or maintenance of the facility. This fact demonstrates that a significant number of the member States regard the Commission as having the necessary legal capacity and status to enter into international agreements and to enjoy privileges and immunities. It further demonstrates that these member States consider the Resolution capable of conferring such legal capacity and status on the Commission and of creating corresponding legal obligations for the member States, and that they are willing to, and actually do, give legal effect to the relevant provisions of the Resolution. In other words, for these member States, the Resolution is a legally binding instrument.

Moreover, all of the States which have expressed the view that the Resolution is only politically binding have nevertheless accredited a Permanent Mission to the Preparatory Commission and duly submitted credentials for their Permanent Representative, regularly participate in the sessions of the Commission and its subsidiary bodies and have never objected to being listed so in the annual reports and other official documents of the Commission. Such could not be the case if the Commission did not have the status of an international organisation, possessing full legal personality and capacity recognised by those States.

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[35] See, United Kingdom *Treaty Series*, No. 46 (1999) Cm. 4399.

[36] Australia, Canada, Cook Islands, Finland, Jordan, Kenya, Mongolia, Niger, Norway, Palau, Peru, South Africa, Ukraine, United Kingdom, Zambia.

[37] Australia, Canada, Cook Islands, Denmark, Ireland, Mongolia, New Zealand, Russian Federation, Sweden, United Kingdom.

The Resolution has not been registered in the United Nations under Article 102 of the Charter, which provides:

> *Article 102*
>
> 1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
>
> 2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Although Article 102 creates the obligation to register international agreements, the failure to do so does not imply that the instrument is not a treaty or international agreement; it simply has the consequence that it cannot be invoked before a United Nations organ.[38] Conversely, registration in and of itself does not qualify an instrument as an "international agreement". The object and purpose of Article 102 is to prevent the conclusion of secret agreements.[39] In the present case, as the Resolution was published as an official document of the meeting of States signatories and has been distributed widely by the Commission, the same effect has been achieved otherwise.

In terms of practice by the Commission itself, four months after the adoption of the Resolution it commenced operations at its seat in Vienna. It concluded a Headquarters Agreement with Austria,[*] which published it as a treaty in accordance with national requirements. The Commission has pursued its mandate over the course of 16 years, funded by its 183 member States, most of which duly pay their assessed contributions. It adopted its Rules of Procedure, appointed its officers, established its Provisional Technical Secretariat and appointed its first Executive Secretary (and his successors) and delegated due authority to him to perform his functions. It adopted staff and financial regulations and rules and entered into contracts to carry out its work.

Thus the Commission itself has clearly proceeded in practice (consistently with the terms expressed in its constituent instrument) on the basis that it is legally established and in possession of full legal personality and capacity, even to the extent of exercising its treaty-making capacity with States (e.g., the Headquarters Agreement with Austria and the facility agreements) and with international organisations (e.g., the Relationship Agreement with the United Nations)[40] and cooperation agreements with eight others[41] and registering

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[38] In contrast see Article 18 of the Covenant of the League of Nations which required registration for an instrument to be binding. See also, Bruno Simma et al. eds., *The Charter of the United Nations: A Commentary*, 2nd ed. (Oxford University Press, 2002), p. 1278.

[39] *Ibid*.

[*] United Nations, *Treaty Series*, vol. 1998, p. 3.

[40] Agreement to Regulate the Relationship between the United Nations and the Preparatory Commission, approved by the Commission in CTBT/PC-11/Annex XII dated 9 May 2000 and by General Assembly in resolution 54/280 dated 30 June 2000. United Nations, *Treaty Series*, vol. 2110, p. 217.

[41] Association of Caribbean States (ACS), European Centre for Medium-Range Weather Forecast (ECMWF), Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), United Nations Development Programme (UNDP), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Meteorological Organization (WMO), United Nations International Computing Centre (UNICC) and World Food Programme (WFP).

them with the United Nations under Article 102 of the Charter. No member State has ever expressed any objection.

Furthermore, the Resolution as an instrument has a constitutional character in that it established an intergovernmental organisation which has proved to be dynamic. In practice the Commission has duly carried out its explicit mandate and it has also exercised implied powers. Evolving in response to the needs of the international community for IMS data for disaster relief and mitigation purposes, in 2006 the Commission decided it could provide IMS data to UNESCO-recognised tsunami warning centers when the data's utility was recognised during the 2004 Indian Ocean tsunami.[42] Again in 2011, the Commission began sharing IMS data with other relevant international organisations in collaboration with assistance with the response to the radiological disaster in Japan.[43]

Thus the Commission meets the criteria of all three streams of doctrinal debate concerning the legal basis for international legal personality of international organizations: (a) the traditional view that it must be explicitly attributed;[44] (b) the "objective legal personality" school, which maintains that organisations which have an organ with decision-making power distinct from the subjective will of the member states possess international legal personality *ipso facto*, bestowed by international law and not by the intention of the parties (i.e., "original personality, as do states");[45] and the current "implied powers" school which holds that international organizations entrusted by their member States with carrying out certain functions have a derived legal personality (not *ipso facto* original).[46] In the opinion of the International Court of Justice in respect of the United Nations, "by entrusting certain functions to [the organisation], with the attendant duties and responsibilities, [the Member States] have clothed it with the competence required to enable those functions to be effectively discharged."[47]

5.3 Travaux préparatoires

The Vienna Convention provides for a supplementary means of interpretation to confirm or clarify the result obtained by application of article 31:

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[42] CTBTO, CTBT/PC-27/2, dated 23 November 2006, paragraphs 18, 29, 30 and annex II, para. 13. See also, Henry G. Schermers and Niels M. Blokker, *International Institutional Law*, section 209A.

[43] Commission press release, "CTBTO to Share Data with IAEA and WHO" of 19 March 2011; Opening Statement of the Executive Secretary, CTBT/WGA-39/CRP.1, dated 23 May 2011; Response of the Verification Regime of the Preparatory Commission to the Nuclear Disaster in Japan, CTBT/PTS/INF.1134 dated 10 June 2011.

[44] See, Henry G. Schermers and Niels M. Blokker, *International Institutional Law*, section 1565 at pp. 988–989, citing as an example Grigorii I. Tunkin, *The Legal Nature of the United Nations,* in *Collected Courses of the Hague Academy of International Law*, vol. 119, 1966-III (Martinus Nijhoff Publishers), pp. 20–25.

[45] *Ibid.*, citing as an example F. Segerstedt, *Common Law of International Organizations* (2008), pp. 43–64.

[46] *Ibid.*, sections 1565–1566, citing the International Court of Justice, *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, pp. 178–179.

[47] *Ibid.*

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

Two draft versions of the Resolution Annex were published without commentary by the Conference on Disarmament's Ad Hoc Committee on a Nuclear Test Ban.[48] There are no other official records of the negotiations of the text. According to the Chairman of the Ad Hoc Committee on a Nuclear Test Ban, the text was prepared by the Friend of the Chair, Ambassador Wolfgang Hoffman, in Geneva and it was an agreed text.[49] This can be presumed to be true, since the second published version is identical to the Resolution Annex finally adopted by States Signatories in New York.

One commentator has indicated that there was disagreement during the drafting of the Resolution Annex over the use of the imperative form "shall" ("The Commission *shall* have standing as an international organisation . . ."). According to that account, during the drafting at least one State asserted that "shall" was inappropriate since the text was intended to be politically binding. Other States differed and the imperative form "shall" was retained in the final text adopted. [50] In this respect, the comments of the Special Rapporteur of the International Law Commission to the Vienna Convention on what became article 32 are of particular interest:

> "Today, it is recognized that some caution is needed in the use of travaux préparatoires as a means of interpretation. They are not [. . .] an authentic means of interpretation. They are simply evidence to be weighed against any other relevant evidence of the intentions of the parties, and their cogency depends on the extent to which they furnish proof of the common understanding of the parties as to the meaning attached to the terms of the treaty. Statements of individual parties during the negotiations are therefore of small value in the absence of evidence that they were assented to by the other parties."[51]

The terms of the Resolution are clear and imperative. As one leading commentator put it:

> "The parties have to manifest their will by 'expressing' it. Although, as has been suggested in jest, agreements between hidden thoughts and ulterior motives may well be the only genuine treaties, law cannot take into consideration anything that remains buried away in the minds of the parties. In addition to being spelled out, their wills must concur to form the object and purpose of the agreement, both of which play so prominent a part

[48] Conference on Disarmament, document CD/NTB/WP.333 dated 10 June 1996 and Rev.1 dated 28 June 1996.

[49] Jaap Ramaker et al., *The Final Test: A History of the Comprehensive Nuclear-Test-Ban Treaty Negotiations* (CBTO Provisional Secretariat, 2003), pp. 31 and 33.

[50] Masahiko Asada, "CTBT: Legal Questions Arising from its Non-Entry-into-Force" 209A.

[51] International Law Commission, third report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur contained in document A/CN.4/167 and Add.1–3, *Yearbook of the International Law Commission, 1964*, vol. II, p. 58, paras. 20–21.

> in the whole law of treaties. That is why the debates in municipal law between supporters of the 'declared' will and 'real' will theories can be regarded as largely academic, for the expressed will is the only real will upon which the parties have been able to reach an agreement . . ."[52]

In a number of key cases outlined below, the International Court of Justice has held the parties to the express terms of the instrument, irrespective of assertions that the instrument was not binding.

6. Jurisprudence of the International Court of Justice

In a number of cases the International Court of Justice has had to determine whether a certain instrument constituted an agreement binding the parties for the purposes of establishing the Court's jurisdiction. The International Court of Justice has consistently relied upon an objective interpretation of the text of the instrument, as the expressed will of the parties, overriding subjective indications of intention to the contrary. The following extracts are drawn from the Court's reasoning in those cases: [53]

– Treaties appear in an "infinite variety."[54]

– "Interpretation must be based above all upon the text of a treaty."[55]

– To determine the status of an instrument, the Court must have regard "to its actual terms and to the particular circumstances in which it is drawn up."[56]

– "It has been argued that the Mandate in question was not registered in accordance with article 18 of the Covenant[57] which provided: 'No such treaty or international engagement shall be binding until so registered.' . . . Moreover, article 18, designed to secure publicity and avoid secret treaties, could not apply in the same way in respect of treaties to which the League of Nations itself was one of the Parties as in respect of treaties concluded among individual Member States. The Mandate for South West Africa, like all the other Mandates, is an international instrument of an institutional character, to which the League of Nations, represented by the Council, was itself a Party. It is the implementation of an institution in which all the Member States are interested as such. The procedure to give the necessary publicity to the Mandates including the one under consideration was applied in view of their

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[52] Paul Reuter, *Introduction to the Law of Treaties*, 2nd ed. (Kegan Paul International, 1995) sections 63–68, pp. 29–30.

[53] For a complete discussion see, Jan Klabbers, *The Concept of Treaty in International Law* (1996); Malgosia Fitzmaurice, "The Practical Working of Treaties," in M. Evans (ed.), *International Law* (2006), pp. 187–213; Malgosia Fitzmaurice, "The Identification and Character of Treaties and Treaty Obligations Between States," in M. Fitzmaurice and O. Elias (eds.), *Contemporary Issues in the Law of Treaties* (2005), pp. 1–48; Anthony Aust, "The Theory and Practice of Informal International Instruments", pp. 787–812; and C. Chinkin, "A Mirage in the Sand? Distinguishing Binding and Non-Binding Relations Between States", pp. 223–249.

[54] *Temple of Preah Vihear (Cambodia* v. *Thailand), Preliminary Objections, Judgment of 26 May 1961: I.C.J. Reports 1967,* p.17 at p. 31.

[55] *Territorial Dispute (Libyan Arab Jamahiriya* v. *Chad), Judgment, I.C.J. Reports 1994*, p. 6, para. 41.

[56] *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, pp. 41–44, paras. 97 and 101–108.

[57] Covenant of the League of Nations.

special character, and in any event they were published in the *Official Journal* of the League of Nations."[58]

– "For its confirmation, the Mandate for South West Africa took the form of a resolution of the Council of the League but obviously it was of a different character. It cannot be correctly regarded as embodying only an executive action in pursuance of the Covenant. The Mandate, in fact and in law, is an international agreement having the character of a treaty or convention."[59]

– " . . . Accordingly, and contrary to the contention of Bahrain, the Minutes are not a simple record of a meeting, similar to those drawn up within the framework of the Tripartite Committee; they do not merely give an account of discussions and summarize points of agreement and disagreement. They enumerate commitments to which Parties have consented. They thus create rights and obligations in international law for the Parties. They constitute an international agreement. [. . .] The Court does not find it necessary to consider what might have been the intentions of the Foreign Minister of Bahrain or, for that matter, those of the Foreign Minister of Qatar. The two Ministers signed a text recording commitments accepted by their Governments, some of which were to be given immediate application. Having signed such a text, the Foreign Minister of Bahrain is not in a position to say that he intended to subscribe only to a 'statement recording a political understanding,' and not to an international agreement."[60]

7. Significance of the achievement of the Commission's mandate

Finally, the significance of the object and purpose of the Resolution and achievement of the Commission's mandate should be factored into the present analysis.

As the Resolution is linked to the CTBT, as a starting point it will be noted that the Preamble of the CTBT provides that:

> "Convinced that the most effective way to achieve an end to nuclear testing is through the conclusion of a universal and internationally and *effectively verifiable* comprehensive nuclear test-ban treaty [. . .],
>
> Affirming the purpose of attracting the adherence of all States to this Treaty and its objective to contribute effectively to the prevention of the proliferation of nuclear weapons in all its aspects, to the process of nuclear disarmament and therefore to the enhancement of international peace and security."[61]

From those preambular recitals it can be inferred that part of the object and purpose of the CTBT is to constitute an effectively verifiable test ban treaty which ultimately will contribute to international peace and security.

Accordingly, article IV(1) of the CTBT requires that:

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[58] *South West Africa Cases (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962*, p. 332.

[59] *Ibid*., p. 330.

[60] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 112, at 120–122, paras. 21–30, 25 and 27.

[61] CTBT, preambular recitals 7 and 10.

Article IV. 1.

In order to verify compliance with this Treaty, a verification regime shall be established consisting of the following elements: (a) An International Monitoring System; (b) Consultation and clarification; (c) On-site inspections; and (d) confidence-building measures. *At entry into force of this Treaty, the verification regime shall be capable of meeting the verification requirements of this Treaty.* [emphasis added][62]

Thus, by signing the CTBT, each State Signatory has accepted that "at entry into force of this Treaty, the verification regime shall be capable of meeting the verification requirements of this Treaty". [Emphasis added].

Correspondingly, the Resolution Annex paragraph 13, requires that:

"The Commission shall undertake all necessary preparations to ensure the operationalization of the Treaty's verification regime at entry into force, pursuant to article IV, paragraph 1, and shall develop appropriate procedures for its operation. . . ."

The tasks necessary to ensure that the verification requirements of the CTBT can be met are those which are specified in the Resolution Annex. Denial of the legal existence of the Commission or the failure of member States to meet their obligations under the Resolution or the failure of the Commission to fulfil its mandate could render the CTBT unimplementable or unverifiable, in part or in whole, at entry into force. The significant consequences that such failure would imply leads to the conclusion that the tasks assigned to the Commission cannot be considered as discretionary.

Furthermore, article 18 of the Vienna Convention provides:

Article 18. Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(*a*) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(*b*) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Accordingly, as part of the object and purpose of the CTBT is to constitute an effectively verifiable treaty and States Signatories are under the obligation not to defeat the object and purpose of the CTBT pending its entry into force, they must therefore comply with the Resolution to enable the Commission to fulfil its mandate to ensure the operationalization of the CTBT verification regime at entry into force.

8. Conclusion

In view of the foregoing, it is the considered opinion that the Resolution Establishing the Preparatory Commission for the CTBTO constitutes an international agreement, legally binding upon States Signatories to the CTBT for the following reasons:

[62] One commentator considers that article IV(1) should be taken to have legal effect before entry into force of the Treaty. See, Masahiko Asada, "CTBT: Legal Questions Arising from its Non-Entry-into-Force", at p. 113.

(*a*) With reference to the definition of "treaty," as a generic term, provided in the 1969 Vienna Convention on the Law of Treaties, the Resolution is an instrument employing terms constituting an agreement, adopted by States in written form, and governed by international law. The fact that it was not signed and makes no provision for procedures for consent to be bound or entry into force has no impact on the binding nature of the commitments stated in the Resolution Annex. Its designation as a "resolution" is irrelevant to the determination of its nature. The failure to register it as an international agreement under Article 102 of the United Nations Charter and publish it in the United Nations *Treaty Series* is also not determinative as it was otherwise published and widely distributed, achieving the purpose of Article 102.

(*b*) Applying the canons of interpretation codified in the Vienna Convention on the Law of Treaties (the ordinary meaning of treaty terms in their context and in the light of the treaty's object and purpose), one can see that the text of the Resolution Annex is expressed in the imperative form "shall", which ordinarily means that the conduct is obligatory. The Resolution is the founding document and constituent instrument of a subject of international law, the Commission. The Resolution Annex establishes legal relations between States Signatories and the Commission by stipulating automatic membership and, finally, the Resolution creates rights and obligations for the Commission's member States. Placed in context, the Resolution is inextricably linked to the CTBT which requires that its verification regime shall be capable of meeting the verification requirements of the Treaty at entry into force. The object and purpose of the Resolution is to "take all necessary measures to ensure the rapid and effective establishment of the CTBTO" and "to this end to establish a Preparatory Commission." The terms of the Resolution and its Annex are not hortatory or discretionary or statements of fact or policy: rather, specific tasks are assigned to the Commission to be funded by all its member States and completed in a time-bound manner. These tasks are the elucidation of the object of the Resolution.

(*c*) The significance of the tasks enumerated in the Resolution are such that if the commitment to accomplish them is interpreted to be only politically binding, leaving it up to the discretion or *bona fides* of States Signatories, the result could render the CTBT unimplementable in part and unverifiable at entry into force of the Treaty. The object and purpose of the CTBT is, in part, to constitute an effectively verifiable test-ban and article IV requires that it be so at entry into force of the CTBT. By signing the CTBT States Signatories have accepted this. The corresponding paragraph 13 of the Resolution Annex requires the Commission to ensure the operationalization of the CTBT verification regime at entry into force. As article 18 of the Vienna Convention places States Signatories under the interim obligation not to defeat the object and purpose of a treaty pending its entry into force, States Signatories must comply by completing the Commission's mandate on time. It would be an unreasonable interpretation to argue that the tasks are discretionary.

(*d*) The practice by the Commission itself, in particular its exercise of treaty-making capacity, reflects that it possesses international legal personality and full legal capacity as conferred by the Resolution.

(*e*) The practice by nearly all of the Commission's 183 member States reflects adherence to the terms of the Resolution, demonstrated throughout the past 16 years by: the accreditation of permanent missions and permanent representatives to the Commission; the exercise of voting rights; payment of over 90 per cent of assessed contributions annu-

ally; conclusion of more than half the required facility agreements/arrangements with the Commission in accordance with the Resolution and Commission decisions; ongoing negotiations of most of the remainder; registration of half of the facility agreements in force as international agreements with the United Nations under Article 102 of the Charter; and establishment and provisional operation of the IDC and 80 per cent of the required IMS facilities.

(*f*) The challenges faced by some member States in their effort to achieve the recognition of the Commission and its privileges and immunities, on the grounds that the Resolution is politically, not legally, binding, need to be addressed at the national level and cannot constitute a legal bar to the accomplishment of the mandate of the Resolution.

The express terms, the significant body of subsequent practice and functional necessity lead to the conclusion that the Resolution Establishing the Preparatory Commission for the CTBTO is legally-binding upon States Signatories. As the CTBT International Monitoring System draws closer to its completion, and as the Preparatory Commission stands poised to complete its mandate to ensure the operationalization of the Treaty's verification regime at entry into force, it is all the more important that the legal nature of the Resolution be fully realised. To this end, the ordinary meaning of the express terms of the Resolution in respect of rights and obligations ("shall") will prove decisive.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

A. International Court of Justice[1]

The International Court of Justice is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

1. Judgments

(a) *Territorial and Maritime Dispute* (*Nicaragua* v. *Colombia*), Judgment, 19 November 2012.

(b) *Questions relating to the Obligation to Prosecute or Extradite* (*Belgium* v. *Senegal*), Judgment, 20 July 2012.

(c) *Ahmadou Sadio Diallo* (*Republic of Guinea* v. *Democratic Republic of the Congo*), Compensation owed by the Democratic Republic of the Congo to the Republic of Guinea, Judgment, 19 June 2012.

(d) *Jurisdictional Immunities of the State* (*Germany* v. *Italy: Greece intervening*), Judgment, 3 February 2012.

2. Advisory Opinions

Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, 1 February 2012.

[1] The texts of the judgments, advisory opinions and orders are published in the *ICJ Reports*. Summaries of the judgments, advisory opinions and orders of the Court are provided in English and French on its website http://www.icj-cij.org. In addition, the summaries can be found in all six official languages of the United Nations on the website of the Codification Division of the United Nations Office of Legal Affairs, http://www.un.org/law/ICJsummaries/. For more information about the Court's activities, see, for the period 1 August 2011 to 31 July 2012, Report of the International Court of Justice, *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 4* (A/67/4). At the time of publication, the report covering the period 1 August 2012 to 31 July 2013 was forthcoming.

3. Pending cases and proceedings as at 31 December 2012

(a) *Construction of a Road in Costa Rica along the San Juan River* (*Nicaragua* v. *Costa Rica*) (2011-).

(b) *Request for interpretation of the Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear* (*Cambodia* v. *Thailand*) (2011-).

(c) *Certain Activities carried out by Nicaragua in the Border Area* (*Costa Rica* v. *Nicaragua*) (2010-).

(d) *Frontier Dispute* (*Burkina Faso/Niger*) (2010-).

(e) *Whaling in the Antarctic* (*Australia* v. *Japan*) (2010-).

(f) *Aerial Herbicide Spraying* (*Ecuador* v. *Colombia*) (2008-).

(g) *Maritime Dispute* (*Peru* v. *Chile*) (2008-).

(h) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia* v. *Serbia*) (1999-).

(i) *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo* v. *Uganda*) (1999-).

(j) *Gabčíkovo-Nagymaros Project* (*Hungary* v. *Slovakia*) (1993-).

B. International Tribunal for the Law of the Sea[2]

The International Tribunal for the Law of the Sea is an independent permanent tribunal established by the United Nations Convention on the Law of the Sea, 1982.[3] The Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea,[4] signed by the Secretary-General of the United Nations and the President of the Tribunal on 18 December 1997, establishes a mechanism for cooperation between the two institutions.

1. Judgments and Orders

(a) *Case No. 20—The "ARA Libertad" Case (Argentina* v. *Ghana)*, Order, Request for the prescription of provisional measures, 15 December 2012.

(b) *Case No. 19—The M/V "Virginia G" Case (Panama/Guinea-Bissau)*, Order, 2 November 2012.

(c) *Case No. 16—Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012.

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[2] For more information about the Tribunal's activities, including relating to orders rendered in 2012, see the Annual report of the International Tribunal for the Law of the Sea for 2012 (SPLOS/256) and the Tribunal's website at http://www.itlos.org.

[3] United Nations, *Treaty Series*, vol. 1833, p. 3.

[4] *Ibid*., vol. 2000, p. 468.

2. Pending cases and proceedings as at 31 December 2012

(a) *Case No. 19—The M/V "Virginia G" Case* (*Panama/Guinea-Bissau*) (2011-).

(b) *Case No. 18—The M/V "Louisa" Case* (*Saint Vincent and the Grenadines* v. *Kingdom of Spain*) (2010-).

C. International Criminal Court[5]

The International Criminal Court is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.[6] The Relationship Agreement between the International Criminal Court and the United Nations, 2004,[7] outlines the relationship between the two institutions.

In 2012, the Court continued to consider the situations in Uganda, the Democratic Republic of the Congo, Darfur (the Sudan), the Central African Republic, Kenya, Libya and Côte d'Ivoire. In addition, on 18 July 2012, the Government of Mali referred to the Prosecutor the situation of crimes allegedly committed in the territory of Mali as of January 2012.

Furthermore, the Office of the Prosecutor conducted preliminary examinations in various situations, including Afghanistan, Colombia, Georgia, Guinea, Honduras, Nigeria and the Republic of Korea.

On 3 April 2012, the Office of the Prosecutor concluded that the declaration lodged by the Palestinian National Authority under article 12, paragraph 3, of the Rome Statute on 22 January 2009 accepting jurisdiction of the Court did not meet its statutory requirements.

On 14 March 2012, the Court issued its first verdict in the case of *The Prosecutor* v. *Thomas Lubanga Dyilo* (ICC-01/04–01/06) (see below under Democratic Republic of the Congo).

1. Situations and cases before the Court as at 31 December 2012

(*a*) Situation in Uganda

In December 2003, the situation concerning Northern Uganda was referred to the Court by Uganda. In July 2004, the Prosecutor opened an investigation.

Pending case

The Prosecutor v. *Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (ICC-02/04–01/05).

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[5] For more information about the Court's activities, see Report of the International Criminal Court, for the period 1 August 2011 to 31 July 2012 (A/67/308). At the time of publication, the report covering the period 1 August 2012 to 31 July 2013 was forthcoming. See also the Court's website at http://www.icc-cpi.int.

[6] United Nations, *Treaty Series*, vol. 2187, p. 3.

[7] *Ibid*., vol. 2283, p. 195.

(*b*) Situation in the Democratic Republic of the Congo

In March 2004, the situation was referred to the Court the Democratic Republic of the Congo. In June 2004, the Prosecutor opened an investigation.

(i) *Judgments delivered by the Trial Chamber*

(a) *The Prosecutor* v. *Mathieu Ngudjolo Chui*, Case No. ICC-01/04–02/12, Judgment, 18 December 2012.

(b) *The Prosecutor* v. *Thomas Lubanga Dyilo*, Case No. ICC-01/04–01/06, Judgment, 14 March 2012.

(ii) Judgment delivered by the Appeals Chamber

The Prosecutor v. *Callixte Mbarushimana*, Case No. ICC-01/04–01/10, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", 30 May 2012.

(iii) Pending cases and proceedings

(a) *The Prosecutor* v. *Germain Katanga*, Case No. ICC-01/04–01/07.

(b) *The Prosecutor* v. *Mathieu Ngudjolo Chui*, Case No. ICC-01/04–02/12 (currently in appeal phase).

(c) *The Prosecutor* v. *Bosco Ntaganda,* Case No. ICC-01/04–02/06.

(d) *The Prosecutor* v. *Sylvestre Mudacumura*, Case No. ICC-01/04–01/12.

(*c*) Situation in Darfur, the Sudan

On 31 March 2005, the Security Council referred the situation in Darfur, the Sudan, to the Prosecutor of the Court.[8] In June 2005, the Prosecutor opened an investigation.

Pending cases and proceedings

(a) *The Prosecutor* v. *Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Case No. ICC-02/05–01/07.

(b) *The Prosecutor* v. *Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05–01/09.

(c) *The Prosecutor* v. *Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Case No. ICC-02/05–03/09.

(d) *The Prosecutor* v. *Abdel Raheem Muhammad Hussein,* Case No. ICC-02/05–01/12.

[8] Security Council resolution 1593 (2005).

(*d*) Situation in the Central African Republic

The situation was referred to the Court by the Central African Republic in December 2004. The Prosecutor opened an investigation in May 2007.

Pending case

The Prosecutor v. *Jean-Pierre Bemba Gombo*, Case No. ICC-01/05–01/08.

(*e*) Situation in Kenya

On 31 March 2010, Pre-Trial Chamber II granted the Prosecutor's request to open an investigation *proprio motu* into the situation in Kenya.

Pending cases and proceedings

(a) *The Prosecutor* v. *William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Case No. ICC-01/09–01/11.[9]

(b) *The Prosecutor* v. *Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Case No. ICC-01/09–02/11.[9]

(*f*) Situation in Libya

On 26 February 2011, the United Nations Security Council referred the situation in Libya to the Prosecutor of the Court.[10] On 3 March 2011, the Prosecutor opened an investigation.

Pending case

The Prosecutor v. *Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Case No. ICC-01/11–01/11.

(*g*) Situation in Côte d'Ivoire

On 3 October 2011, Pre-Trial Chamber III granted the Prosecutor's request for authorization to open an investigation *proprio motu* into the situation in Côte d'Ivoire.

(i) *Judgment delivered by the Appeals Chamber*

The Prosecutor v. *Laurent Gbagbo,* Case No. ICC-02/11–01/11, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of the proceedings, 12 December 2012.

[9] On 23 January 2012, Pre-Trial Chamber II declined to confirm the charges against Henry Kiprono Kosgey and Mohammed Hussein Ali.

[10] Security Council resolution 1970 (2011).

(ii) *Pending cases*

(a) *The Prosecutor* v. *Laurent Gbagbo,* Case No. ICC-02/11–01/11.

(b) *The Prosecutor* v. *Simone Gbagbo*, Case No. ICC-02/11–01/12.

D. International Criminal Tribunal for the former Yugoslavia[11]

The International Criminal Tribunal for the former Yugoslavia is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 827 (1993) of 25 May 1993.[12]

1. Judgements delivered by the Appeals Chamber

(a) *Prosecutor* v. *Milan Lukić and Sredoje Lukić*, Case No. IT-98–32/1-A, Judgment, 4 December 2012.

(b) *Prosecutor* v. *Vojislav Šešel,* Case No. IT-03–67-R77.3-A, Judgement on Allegations of Contempt, 28 November 2012.

(c) *Prosecutor* v. *Ante Gotovina and Mladen Markač*, Case No. IT-06–90-A, Judgement, 16 November 2012.

(d) *Prosecutor* v. *Jelena Rašić*, Case No. IT-98–32/1 -R77.2-A, Judgement on Allegations of Contempt, 16 November 2012.

2. Judgements delivered by the Trial Chambers

(a) *Prosecutor* v. *Zdravko Tolimir*, Case No. IT-05–88/2-T, Judgement, 12 December 2012.

(b) *Prosecutor* v. *Haradinaj et al*., Case No. IT-04–84bis-T, Retrial Judgement, 29 November 2012.

(c) *Prosecutor* v. *Vojislav Šešel*, Case No. IT-03–67-R77.4, Judgement on Allegations of Contempt, 28 June 2012.

(d) *Prosecutor* v. *Milan Tupajić*, Case No. IT-95–5/18-R77.2, Judgement on Allegations of Contempt, 24 February 2012.

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[11] The texts of the indictments, decisions and judgements are published in the *Judicial Reports/Recueils judiciaires* of the International Criminal Tribunal for the former Yugoslavia for each given year. The texts are also available in English and French on the Tribunal's website at http://www.icty.org. For more information about the Tribunal's activities, see, for the period 1 August 2011 to 31 July 2012, Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (A/67/214–S/2012/592). At the time of publication, the report covering the period 1 August 2012 to 31 July 2013 was forthcoming.

[12] The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 of 22 February 1993 (S/25704 and Add.1).

(e) *Prosecutor* v. *Jelena Rašić*, Case No. IT-98–32/1 -R77.2, Written Reasons for Oral Sentencing Judgement, 6 March 2012.

(f) *Prosecutor* v. *Jelena Rašić*, Case No. IT-98–32/1 -R77.2, Oral Sentencing Judgement on Allegations of Contempt, 7 February 2012.

E. International Criminal Tribunal for Rwanda[13]

The International Criminal Tribunal for Rwanda is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 955 (1994), adopted on 8 November 1994.[14]

On 28 June 2012, the Referral Chamber designated under rule 11*bis* of the Tribunal's Rules of Procedure and Evidence referred the case of the fugitive accused Phénéas Munyarugarama (Case No. ICTR-02–79-R11*bis*) to the authorities of Rwanda. This was the eighth and final case to be transferred to Rwanda by the Tribunal following that of *The Prosecutor* v. *Bernard Munyagishari* (Case No. ICTR-2005–89-R11*bis*) (6 June 2012) and those of the fugitives accused Aloys Ndimbati (Case No. ICTR-95–1F-R11*bis*) (25 June 2012), Charles Ryandikayo (Case No. ICTR-95–1E-R11*bis*) (20 June 2012), Ladislas Ntaganzwa (Case No. ICTR-96–9-R11*bis*) (8 May 2012), Charles Sikubwabo (Case No. ICTR-95–1D-R11*bis*) (26 March 2012) and Fulgence Kayishema (Case No. ICTR-01–67-R11*bis*) (22 February 2012).

On 1 July 2012, the Arusha branch of the International Residual Mechanism for International Criminal Tribunals commenced operations to carry out certain residual functions of the International Criminal Tribunal for Rwanda, including trial and appellate proceedings, the supervision and enforcement of sentences, and tracking the remaining fugitives.[15] On 1 August 2012, the files of the three high-level fugitives, Félicien Kabuga, Protais Mpriranya and Augustin Bizimana, were handed over from the Prosecutor of the Tribunal to the Prosecutor of the Mechanism.

1. Judgements delivered by the Appeals Chamber

(a) *Jean-Baptiste Gatete* v. *the Prosecutor*, Case No. ICTR-00–61-A, Judgement, 9 October 2012.

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[13] The texts of the orders, decisions and judgements are published in the *Recueil des ordonnances, décisions et arrêts/Reports of Orders, Decisions and Judgements* of the International Criminal Tribunal for Rwanda. The texts are also available in English and French in the Tribunal's Judicial Records Database at http://www.unictr.org. For more information about the Tribunal's activities, see, for the period 1 July 2011 to 30 June 2012, Seventeenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (A/67/253–S/2012/594). At the time of publication, the report covering the period 1 July 2012 to 30 June 2013 was forthcoming.

[14] The Statute of the Tribunal is contained in the annex to the resolution.

[15] See S/2012/849. For more information about the International Residual Mechanism for International Criminal Tribunals, see section 17 of chapter III above.

(b) *Aloys Ntabakuze* v. *the Prosecutor,* Case No. ICTR-98–41A-A, Judgement, 8 May 2012.

(c) *Ildephonse Hategekimana* v. *the Prosecutor*, Case No. ICTR-00–55B-A, Judgement, 8 May 2012.

(d) *Gaspard Kanyarukiga* v. *the Prosecutor*, Case No. ICTR-02–78-A, Judgement, 8 May 2012.

2. Judgements delivered by the Trial Chambers

(a) *The Prosecutor* v. *Augustin Ngirabatware*, Case No. ICTR-99–54-T, 20 December 2012.

(b) *The Prosecutor* v. *Ildéphonse Nizeyimana*, Case No. ICTR-2000–55C-T, Judgement and Sentence, 19 June 2012.

(c) *The Prosecutor* v. *Callixte Nzabonimana*, Case No. ICTR-98–44D-T, Judgement and Sentence, 31 May 2012.

(d) *The Prosecutor* v. *Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98–44-T, Judgement and Sentence, 2 February 2012.

F. Special Court for Sierra Leone[16]

The Special Court for Sierra Leone is an independent court established by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone.[17] The Court is mandated to try those 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.

On 26 April 2012, Trial Chamber II delivered its judgment in the case of *The Prosecutor* v. *Charles Ghankay Taylor*. Charles Taylor, the former President of Liberia, was found guilty and convicted on all counts of an 11-count indictment, making him the first former Head of State to be convicted by an international criminal tribunal since 1946. The trial is currently in the appeal phase.

1. Judgements delivered by the Appeals Chamber

No judgements were delivered by the Appeals Chamber of the Special Court for Sierra Leone in 2012.

[16] The texts of the judgements and decisions are available on the Court's website at http://www.sc-sl.org. For more information on the Court's activities, see, for the period 1 June 2011 to 31 May 2012, the Ninth Annual Report of the President of the Special Court. At the time of publication, the Tenth Annual Report, covering the period 1 June 2012 to 31 May 2013, was forthcoming.

[17] For the text of the Agreement and the Statute of the Special Court dated 16 January 2002, see United Nations, *Treaty Series,* vol. 2178, p. 137.

2. Judgements delivered by the Trial Chambers

(a) *Independent Counsel* v. *Bangura et al.*, Case No. SCSL-2011–02-T, Sentencing Judgement in Contempt Proceedings, 11 October 2012.

(b) *Independent Counsel* v. *Bangura et al.*, Case No. SCSL-2011–02-T, Judgement in Contempt Proceedings, 25 September 2012.

(c) *The Prosecutor* v. *Eric Senessie*, Case No. SCSL-2011–01-T, Judgement in Contempt Proceedings, 21 June 2012.

(d) *The Prosecutor* v. *Charles Ghankay Taylor*, Case No. SCSL-03–01-T, Sentencing Judgement, 30 May 2012.

(e) *The Prosecutor* v. *Charles Ghankay Taylor*, Case No. SCSL-03–01-T, Judgement, 18 May 2012.

G. Extraordinary Chambers in the Courts of Cambodia[18]

The Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea, signed in Phnom Penh on 6 June 2003,[19] entered into force on 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute the crimes committed during the period of Democratic Kampuchea.

1. Judgement delivered by the Supreme Court Chamber

Kaing Guek Eav "Duch", Case No. 001/18–07–2007-ECCC/SC, Appeal Judgement, 3 February 2012.

2. Judgements delivered by the Trial Chamber

No judgements were delivered by the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia in 2012.

[18] The texts of the decisions of the Extraordinary Chambers in the Courts of Cambodia are available on its website, http://www.eccc.gov.kh. For more information on the Court's activities, see the Report of the Secretary-General on the Khmer Rouge trials of 19 September 2012 (A/67/380) and the Yearly Financial and Activity Progress Report as at 31 December 2012 (forthcoming at the time of publication).

[19] United Nations, *Treaty Series,* vol. 2329, p. 117.

H. Special Tribunal for Lebanon[20]

The Special Tribunal for Lebanon was established in 2007 pursuant to the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, dated 22 January and 6 February 2007,[21] and Security Council resolution 1757 (2007) of 30 May 2007 to prosecute persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons.

Judgements

No judgements were delivered by the Trial Chamber or the Appeals Chamber of the Special Tribunal for Lebanon in 2012.

[20] For more information about the activities of the Special Tribunal, see the Tribunal's website at http://www.stl-tsl.org. See the third annual report of the Special Tribunal covering the period 1 March 2011 to 29 February 2012 (S/2012/205) and the fourth annual report covering the period 1 March 2012 to 29 February 2013.

[21] United Nations, *Treaty Series*, vol. 2461, p. 257.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

The United States of America

Supreme Court of the State of New York, County of the Bronx—Part IA-19A

Nafissatou Diallo v. Dominique Strauss-Kahn, Decision, Index No. 307065/11 of 1 May 2012

Motion to dismiss on grounds of lack of subject-matter jurisdiction—Claims of immunity from civil process by former Managing Director of the International Monetary Fund—"Absolute" or "functional" immunity—International Monetary Fund Articles of Agreement and International Organizations Immunity Act bestow only functional immunity—Express right of a specialized agency to modify and curtail standard immunity clauses under the United Nations Convention on Privileges and Immunities of the Specialized Agencies, 1947—Rejection of claim that absolute immunity for executive heads under the 1947 Convention is evidence of customary international law—Question whether customary international law trumps conflicting domestic statute—Non-applicability of article 39 of the Vienna Convention on Diplomatic Relations—Enjoyment of residual immunity from pre-resignation acts in furtherance of the business of the International Monetary Fund

> "The reputation of a thousand years may be determined by the conduct of one hour" - Japanese proverb (The International Monetary Fund ["IMF"] 2011 Annual Report - Ethics Applied).

Few are unfamiliar with the highly publicized events at New York City's Sofitel Hotel on May 14, 2011 involving claims by Nafissatou Diallo, a chambermaid at the hotel, that she was sexually assaulted by Dominique Strauss-Kahn, then Managing Director of the IMF, who denied Ms. Diallo's allegation but admitted to a consensual sexual encounter with her.

Mr. Strauss-Kahn was arrested on May 14, 2011, resigned his post at the IMF on May 18, 2011 and was indicted on felony charges on May 19, 2011. Several months later, on August 8, 2011, Ms. Diallo instituted this civil action, venued in this court because of her Bronx residence, seeking damages for injuries and other losses she alleges she suffered as a result of the claimed attack.

Prior to Mr. Strauss-Kahn interposing an answer to the civil complaint, all criminal charges against him were dropped. Thereafter, he moved pre-answer, as was his right under New York law, to dismiss plaintiff's civil complaint on the grounds that this court lacks subject matter jurisdiction of this action because, on the day this action was commenced and service effectuated, he enjoyed immunity from civil process because of his previous

position as Managing Director of the IMF.[1] Ms. Diallo has opposed the motion, arguing that on the day of service, Mr. Strauss-Kahn enjoyed no immunity, except for any residual immunity which might attach to acts he performed in furtherance of the business of the IMF prior to his resignation on May 18, 2011. Mr. Strauss-Kahn has conceded that whatever occurred at the Sofitel Hotel with Ms. Diallo was not in the furtherance of the business of the IMF.

Indisputably, as Managing Director of the IMF, Mr. Strauss-Kahn enjoyed some type of immunity, either "absolute", as he contends, which would spare him from criminal or civil liability in this country, even on matters strictly personal and unrelated to the IMF, or "functional" or "official acts" immunity which only relates to activities in furtherance of the business of the IMF and would be of no benefit to him as to the claims asserted in this lawsuit. Thus, to prevail on his motion, Mr. Strauss-Kahn must establish that he enjoyed absolute immunity which continued after his resignation from the IMF until at least August 8, 2011, the day process in this action was served. The court heard extensive oral argument on the motion on March 28, 2012.

Background

In July, 1944, optimistic that the conclusion of World War II was near, delegates from 44 nations met at Bretton Woods, New Hampshire, to promulgate plans for a post-World War II international monetary system. From that gathering came the idea for the IMF. Soon, Articles of Agreement* ("Articles") for the proposed agency were drafted which were ratified by the United States in 1945 by enactment of the Bretton Woods Agreement Act (22 USC § 286 *et seq*). By 1946, the Articles were ratified by sufficient nations to make the IMF a legally empowered specialized agency.

Today, nearly 70 years later, the IMF is an organization of 188 countries headquartered in Washington D.C. and capitalized by a quota system which requires that an IMF member country be assigned a quota which is based on the country's relative economic size in the global community. A country's voting power is linked to its quota. The United States of America pays the largest quota of any member nation.

Turning to the issue of immunity, pursuant to IMF Articles § 8(i), *all employees of the IMF are "immune from legal process with respect to acts performed by them in their official capacity* except when the Fund waives [the] immunity . . ." (emphasis supplied). This provision is expressly incorporated in the Bretton Woods Agreement (22 USC § 286h), which gives the immunity provisions of the Articles "full force and effect in the United States . . ." hence, the document creating the IMF and the American statute approving it provide for "functional" or "official acts" immunity for IMF employees.

In 1945, the International Organizations Immunity Act of 1945 (IOIA) (22 USC § 288d[b]), became law in the United States. This statute provides that:

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[1] "Because immunity is an exception to jurisdiction, a court's first task is to determine whether personal and subject matter jurisdiction exist with regard to the defendant and the substance of the claim, respectively" (Chimene I. Keitner, *Foreign Official Immunity and the "Baseline" Problem*, 80 Fordham L. Rev. 605, 621 [2011]).

* United Nations, *Treaty Series*, vol. 2, p. 39.

"*representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as* such representatives, officers, or *employees* except insofar as such immunity may be waived by the foreign government or international organization concerned" (emphasis supplied).

The 1940s saw the advent of a new diplomatic order due, in large measure, to the creation of the United Nations (U.N.), and the necessity, in the aftermath of World War II, for the international community to expand global cooperation into more focused fields, resulting in the creation of several international organizations which later became specialized agencies of the U.N. system, among which was the IMF.

Mr. Strauss-Kahn contends that the U.N. inspired Convention on the Privileges and Immunities of the Specialized Agencies (Specialized Agencies Convention), approved November 21, 1947, 33 U.N.T.S. 261 (entered into force December 2, 1948), with its absolute immunity protection for the "Executive Head" of specialized agencies, is evidence of an international norm binding on civilized nations as part of customary law. But, as will be shown in greater detail later, the Specialized Agencies Convention never caught on internationally as the U.N. had hoped. For instance, Ethiopia, Switzerland and the United States, nations where major centers of multilateral diplomacy are located (Addis Ababa, Geneva, New York and Washington DC) never even acceded to its terms (see Petrovic, *Privileges and Immunities of U.N. Specialized Agencies in Field Activity, Practical Legal Problems of International Organizations* [2009] [available at http://www.iilj.org/GAL/documents/GALch.Petrovic.pdf] [accessed on April 30, 2012]).

Mr. Strauss-Kahn's Claim of absolute immunity

Confronted with the reality that the IMF's own Articles, the Bretton Woods Agreement and the IOIA bestow only functional immunity on the Managing Director of the IMF, Mr. Strauss-Kahn contends that customary international law requires the court to disregard binding American statutes and apply the provisions of the Specialized Agencies Convention, to which the United States is not a signatory, because its acceptance by 116 countries around the world establishes a customary international norm as to the type and extent of immunity available to the "executive head" of a specialized agency.

Concededly, the Special Agencies Convention, at first glance, provides Mr. Strauss-Kahn with the absolute immunity which he seeks. However, the Convention's provisions are far more extensive than merely bestowing immunities to heads of specialized agencies. The terms of the Convention recognize the prerogative of a State, housing the headquarters of a specialized agency, to enter into "supplemental agreements [with the agency] adjusting the provisions" of the Specialized Agencies Convention to curtail the privileges and immunities granted thereunder (Specialized Agencies Conventions § 39).

Moreover, there is no dispute that the IMF filed, as it was entitled to do under this Specialized Agencies Convention, a document entitled Annex V* which expressly provides that the Specialized Agencies Convention

* United Nations, *Treaty Series*, vol. 33, p. 298.

> "in its application to the International Monetary Fund does not require modification or amendment of [the IMF's] Articles of Agreement" or "impair or limit any of the rights, immunities, privileges or exemptions conferred upon the fund or any of its members" "by the Articles of Agreement of the Fund, or by any statute, law or regulation of any member of the fund . . ."

When pressed by this court during oral argument as to the meaning of Annex V, counsel for Mr. Strauss-Kahn stated the following:

> "[t]he IMF is simply saying by that Convention whatever rights and privileges and immunities are set forth in our Articles, we continue to reserve those. However, if there are greater rights, privileges and immunities contained in the Convention we are signing on then" (official court transcript, at 8–9).

Actually, quite the opposite is true:

> "[t]he convention on the privileges and immunities of the Specialized Agencies (the '1947 Convention') which the U.N. General Assembly approved on 21 November 1947, . . . came into force on 2 December 1948. It has a total of 116 State Parties. The number of State Parties, however, may be misleading. Each State Party has to indicate in its instrument of accession the specialized agency or agencies it undertakes to apply the provisions of this Convention.
>
> Taking into account the specifications of each specialized agency and the fact that they were created by international treaties using different formulations and defining different needs, the 1947 convention has 2 major parts. The first part consists of so-called 'standard clauses', and the second part is composed of 18 annexes relating to particular organizations. While the standard clauses were adopted by the U.N. General Assembly, the text of each annex was approved by the specialized agency concerned in accordance with its constitutional procedure" (Petrovic, *Privileges and Immunities of U.N. Specialized Agencies in Field Activity, supra,* at 4–5).

In other words, a specialized agency, under the express language of the Specialized Agencies Convention, can opt out of the immunity provisions, as the IMF clearly did. Indeed Specialized Agencies Convention § 2 states:

> "each state party to this convention in respect of any specialized agency to which this convention has become applicable in accordance with § 37 shall accord to, or in connexion [sic] with, that agency the privileges and immunities set forth in the standard clauses on the conditions specified therein, subject to any modification of those clauses contained in the provisions of the final (or revised) annex relating to that agency and transmitted in accordance with §§ 36 or 38."

In view of the express rights of a specialized agency to modify and curtail standard immunity clauses, its hard to make the case that the Specialized Agencies Convention is a codification of customary international law on immunity for specialized agency executive heads. Indeed, as the International Court of Justice in the North Sea Continental Shelf Cases, North Sea Continental Shelf (Judgment, I.C.J. Reports 1969, 3, 38-39) aptly stated:

> "[C]ustomary law rules and obligations . . . by their very nature must have equal force for all members of the international community, and cannot therefore be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour."

Also unpersuasive is Mr. Strauss-Kahn's argument that:

> "The best evidence that absolute immunity for executive heads of specialized agencies has achieved the status of customary international law is the vast number of United Nations' member states that have adopted the Specialized Agencies Convention (citations omitted). Since its adoption in 1947, 116 of the United Nations' 193 member nations have ratified and become parties to the Specialized Agencies Convention." (Defendant's Memorandum at Law at 12–13).

Yes, the numbers are impressive, but as Mr. Strauss-Kahn well knows, *188* countries belong to the IMF and have presumably accepted its Articles, limited immunity *and all*. As a matter of fact, one commentator has described the state of ratification of the Specialized Agencies Conventions as unsatisfactory:

> "The state of ratification of the [specialized agencies convention] is not satisfactory. There are still too many states that are members of the specialized agencies but that failed to ratify this Convention and accede to one of its annexes. While the specialized agencies have almost universal membership, the number of States recognizing their privileges and immunities through the 1947 Convention does not echo this universal character. For some older agencies the number of parties attain almost two thirds of Member States: for the ICAO this number is 106; for the WMO and ITU is 109, for the ILO, FAO, UNESCO is 113; for the UPU 120. However, some other agencies, especially those created later, have their privileges and immunities recognized by fewer less States: UNIDO by 18, IFAD by 29, WIPO by 36, IMO by 47, IDA by 62, IFC by 72, IMRD by 92, and IMF by 95" (Petrovic, *supra*, at 13).

Customary international law in the aftermath of *Erie* v *Tompkins*

In its Report on the need and feasibility of a compensation program for victims of diplomatic crimes, the United States Department of State wrote:

> "Governments have long recognized that diplomatic immunity is essential to the conduct of meaningful foreign relations. The fundamental rules of diplomatic law, such as the personal inviolability of the embassador and the special status of diplomatic communications, have existed among civilized states for centuries. Immunity from a nation's civil and criminal jurisdiction allows members of foreign missions to protect sensitive national security information and to perform their functions without excessive interference from hostile receiving governments. In 1790, the United States enacted into law an unqualified grant of diplomatic immunity. Other nations enacted similar laws and the principle became an important feature of customary international law."

Against his historical backdrop, the United States Supreme Court's decision in *Erie v Tompkins* (304 US 64 [1938]) has sparked a robust debate among legal scholars divided over the issue of whether customary international law is judge-made federal common law requiring Congressional or Constitutional authorization for its continued application in federal courts. (Revisionist View) (*see generally* Bradley and Goldsmith, *Customary International Law as Federal Common Law: a Critique of the Modern Position*, 100 Harv. L. Rev. 815 [1997]) or common law created as a consequence of centuries of custom and tradition and carrying the authority of "the consent of nations reflected in their practice" (*see* Dodgem *Customary International Law and the Question of Legitimacy*, 120 Harv. L. Rev. 19, 23–24 [2007] [The Modern View]. This discourse was re-invigorated, some years ago, by the Supreme Court's decision in *Sosa v Alvarez-Machain* (542 US 692 [2004]) which both sides here embrace as supporting their position.

This court need not endorse either position. However, as to whether customary international law trumps conflicting statute enacted by Congress, the *Sosa* court wrote:

> "[n]othing Congress has done is a reason for us to shut the door to the law of nations entirely. It is enough to say that Congress may do that at any time (explicitly, or implicitly by treaties or statutes that occupy the field), just as it may modify or cancel any judicial decision so far as it rests on recognizing an international norm as such" (*Sosa*, *supra* at 731).

Indeed, the Restatement (Third) of Foreign Relations Law § 115(1)(a) makes clear that:

> "(1)(a) an act of Congress supercedes an earlier rule of international law or a provision of an international agreement as law of the United States if the purpose of the acts to supercede the earlier rule or provision is clear or if the act and earlier rule or provision cannot be fairly reconciled."

As discussed previously, World War II saw the creation of a United Nations and specialized agencies, many with a significant presence in New York City and Washington, DC. As to the personnel of international organizations, a new type of diplomatic entity, the United States made a decision to bestow limited "official acts" immunity, as evidence by the enactment of the IOIA (*see* United States Department of State, *Diplomatic Consular Immunity Guidance for Law Enforcement and Judicial Authorities* at 8 [August 15, 2011] [available at www.state.gov/documents/organization/150546.pdf] [accessed on April 30, 2012]) and to announce to the diplomatic community that specialized agency employees will be accorded a lower level of immunity than a diplomatic envoy.

Thus, the IOIA, with its official acts immunity, not customary international law, controls the nature of immunity relative to Mr. Strauss-Kahn. The United States of America, through its political processes can make laws, ratify treaties or issue judicial pronouncements which require a non-citizen employee of a specialized agency, here on our soil as part of the fabric of international governance, to behave, in their private conduct, in a lawful way, failing which to be answerable in courts of law or other tribunals under the same standards as their next door American neighbors. At a time when issues significantly shape today's international law, customary or otherwise, it is hardly an assault on long standing principles of comity among nations to require those working in this country to respect our laws as Americans working elsewhere must request theirs.

Finally, lest there be any confusion as to the type of immunities enjoyed by employees of the IMF, one need only read the IMF prepared document entitled *Overview Of The Rules On Conduct And Ethics At The IMF* (May 12, 2002),* prepared by its then Assistant General Counsel Joan S. Powers, who wrote:

> "Perhaps another reason for the adoption of rather comprehensive codes of staff conduct by international organizations stems from the fact that these organizations and their officials enjoy certain privileges and immunities under their growing governing charters. At the IMF, these privileges and immunities are provided in the Articles of Agreement. In particular, officials are immune from judicial process with respect to acts performed in their official capacities. *[O]fficials do not have immunity with respect to their personal conduct outside the workplace . . .*

* Available from: http://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/powers.pdf (accessed on 31 December 2012).

These types of measures are intended to allow the IMF to demonstrate to its membership and the public that there are standards of conduct to which its staff will be held and that these standards are taken seriously and enforced" (emphasis supplied) (available at http://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/powers.pdf [accessed on April 30, 2012].

Mr. Strauss-Kahn's resignation

Confronted with well settled law that his voluntary resignation from the IMF terminated any immunity which he enjoyed save, of course, for acts pre-resignation in furtherance of the business of the IMF, Mr. Strauss-Kahn throws (legally speaking, that is) his own version of a "Hail Mary" pass by asserting that once he was arrested and confined to a New York home as a condition of bail he became a beneficiary of Article 39 of the Vienna Convention on Diplomatic Relations (Vienna Convention) (23 USG 3227, Article 39[2] [April 18, 1961]) which states as follows:

> "When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period of which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist."

In its preamble, the Vienna Convention recalls "that people from all nations from ancient times have recognized the status of diplomatic agents . . ." But, that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States. Vienna Convention Article 3(1)(a) provides that "[t]he functions of a diplomatic mission consists *inter alia* in: (a) representing the sending State in the receiving State . . ."

Assuming *arguendo*, that Mr. Strauss-Kahn was a beneficiary of the Specialized Agencies Convention, more particularly § 21, he would have been entitled to the same "privileges and immunities, exemptions and facilities accorded to *diplomatic envoys* in accordance with international law" (emphasis supplied). However, to claim the "extension" provided by the Vienna Convention Article 39(2) Mr. Strauss-Kahn had to be more than a diplomatic envoy (which assumes that enjoying the immunities of a diplomatic envoy permits Mr. Strauss-Kahn to claim to be one—a conclusion to which this court does not subscribe) or "*diplomatic agent*" (the term used in the Vienna Convention), he had to be "*a member of [a] mission*", which clearly he was not; indeed he was not even in the employ of the IMF when the civil action was commenced. This is significant because the purpose of Article 39(2) is to protect members of a mission whose diplomatic tour has ended but whose return home has been delayed. As the expression goes, Mr. Strauss-Kahn "up and quit" months before service was effectuated in this action. He was neither an employee of the IMF, a diplomatic envoy or diplomatic agent let alone a member of a diplomatic corps after May 18, 2011. Thus, Mr. Strauss-Kahn enjoyed no immunity other than residual immunity from pre-resignation acts in furtherance of the business of the IMF after the date of the resignation.

But there is more. If Mr. Strauss-Kahn was entitled to absolute immunity, as he contends, there was ample opportunity before now to assert it. If he's correct (and the IMF

didn't ultimately waive the immunity), the need for a criminal prosecution would have been obviated, with little likelihood of a civil action. But his explanation for not raising immunity during the criminal proceedings, conveyed to this court by his esteemed counsel during oral argument, concerned his desire to clear his name. This court has no reason to question his motives; however, Mr. Strauss-Kahn's decision to deliberately forebear from asserting available immunities should not, as a matter of customary international law or fundamental fairness, be used to prevent another from exercising legal rights otherwise available. In other words, Mr. Strauss-Kahn cannot eschew immunity in an effort to clear his name only to embrace it now in an effort to deny Ms. Diallo the opportunity to clear hers.

Mr. Strauss-Kahn's motion for dismissal is denied.

[*Signed*] Douglas E. Mckeon, J.S.C.

Part Four

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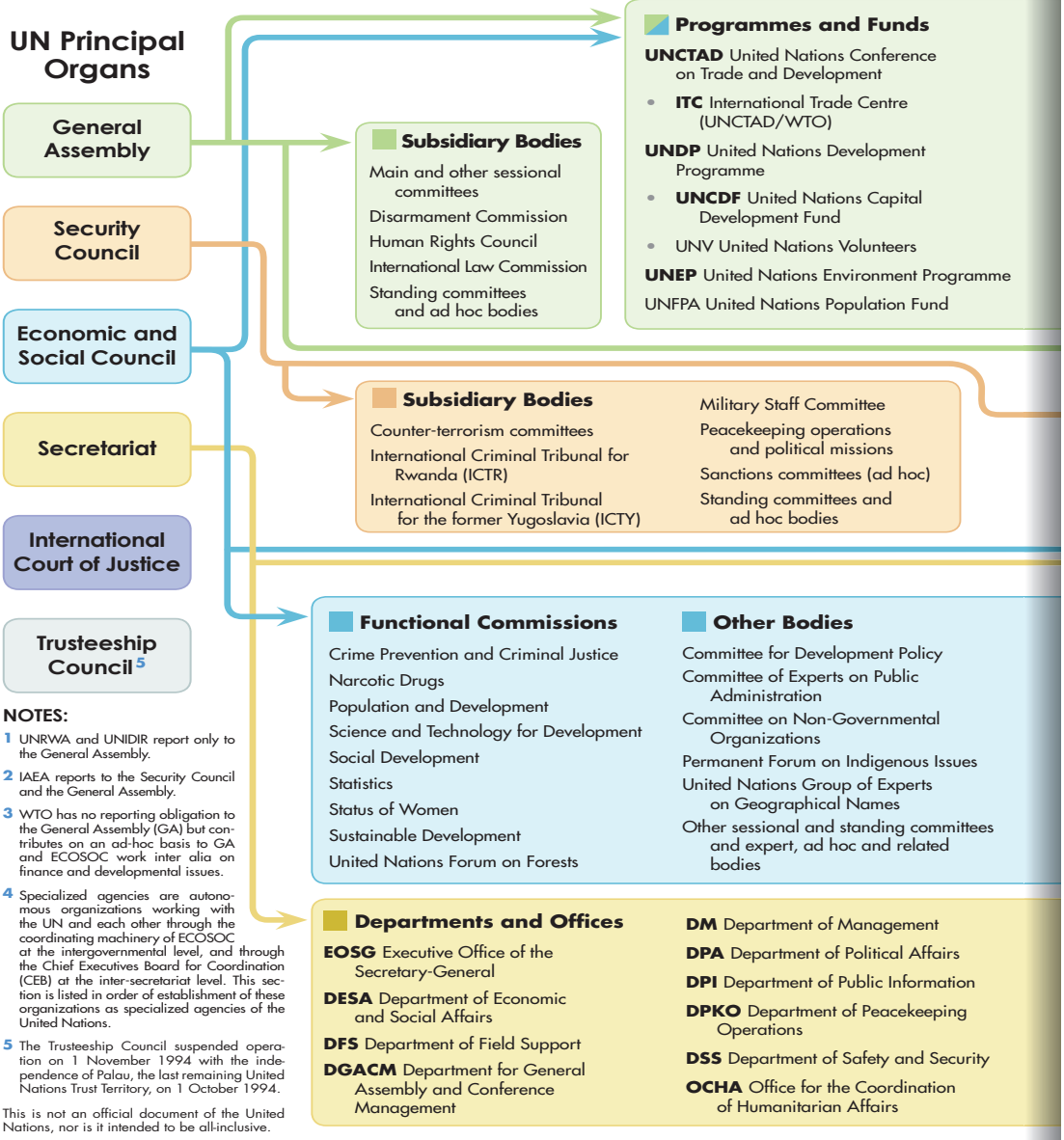
The United Nations System



NOTES:

1 UNRWA and UNIDIR report only to the General Assembly.

2 IAEA reports to the Security Council and the General Assembly.

3 WTO has no reporting obligation to the General Assembly (GA) but contributes on an ad-hoc basis to GA and ECOSOC work inter alia on finance and developmental issues.

4 Specialized agencies are autonomous organizations working with the UN and each other through the coordinating machinery of ECOSOC at the intergovernmental level, and through the Chief Executives Board for Coordination (CEB) at the inter-secretariat level. This section is listed in order of establishment of these organizations as specialized agencies of the United Nations.

5 The Trusteeship Council suspended operation on 1 November 1994 with the independence of Palau, the last remaining United Nations Trust Territory, on 1 October 1994.

UN-HABITAT United Nations Human Settlements Programme

UNHCR Office of the United Nations High Commissioner for Refugees

UNICEF United Nations Children's Fund

UNODC United Nations Office on Drugs and Crime

UNRWA[1] United Nations Relief and Works Agency for Palestine Refugees in the Near East

UN-Women United Nations Entity for Gender Equality and the Empowerment of Women

WFP World Food Programme

Research and Training Institutes

UNICRI United Nations Interregional Crime and Justice Research Institute

UNIDIR[1] United Nations Institute for Disarmament Research

UNITAR United Nations Institute for Training and Research

UNRISD United Nations Research Institute for Social Development

UNSSC United Nations System Staff College

UNU United Nations University

Other Entities

UNAIDS Joint United Nations Programme on HIV/AIDS

UNISDR United Nations International Strategy for Disaster Reduction

UNOPS United Nations Office for Project Services

Related Organizations

CTBTO PrepCom Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

IAEA[2] International Atomic Energy Agency

OPCW Organisation for the Prohibition of Chemical Weapons

WTO[3] World Trade Organization

Advisory Subsidiary Body

UN Peacebuilding Commission

Regional Commissions

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

Specialized Agencies[4]

ILO International Labour Organization

FAO Food and Agriculture Organization of the United Nations

UNESCO United Nations Educational, Scientific and Cultural Organization

WHO World Health Organization

World Bank Group

- **IBRD** International Bank for Reconstruction and Development
- **IDA** International Development Association
- **IFC** International Finance Corporation
- **MIGA** Multilateral Investment Guarantee Agency
- **ICSID** International Centre for Settlement of Investment Disputes

IMF International Monetary Fund

ICAO International Civil Aviation Organization

IMO International Maritime Organization

ITU International Telecommunication Union

UPU Universal Postal Union

WMO World Meteorological Organization

WIPO World Intellectual Property Organization

IFAD International Fund for Agricultural Development

UNIDO United Nations Industrial Development Organization

UNWTO World Tourism Organization

OHCHR Office of the United Nations High Commissioner for Human Rights

OIOS Office of Internal Oversight Services

OLA Office of Legal Affairs

OSAA Office of the Special Adviser on Africa

OSRSG/CAAC Office of the Special Representative of the Secretary-General for Children and Armed Conflict

UNODA Office for Disarmament Affairs

UNOG United Nations Office at Geneva

UN-OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States

UNON United Nations Office at Nairobi

UNOV United Nations Office at Vienna

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