

# INTERNATIONAL LAW HANDBOOK

COLLECTION OF INSTRUMENTS



BOOK ONE



**Dag Hammarskjöld**

The photograph on the cover is of a stained glass window in the United Nations Headquarters building in New York. The staff of the United Nations and Marc Chagall donated the stained glass panel designed by the French artist as a memorial to Dag Hammarskjöld and 15 others who died in a plane crash while on a peace mission in the Congo in 1961. Dag Hammarskjöld served as the second Secretary-General of the United Nations from 10 April 1953 until his death on 18 September 1961. He introduced the concept of peacekeeping and was awarded the Nobel Peace Prize. He also defined the

role of an international civil servant based on his personal devotion to the Charter of the United Nations and to public service.

In the panel Chagall sought to express the simplicity and beauty of the ideals of peace and brotherhood for which the United Nations was founded. Symbols of peace and love can be found throughout the panel. In the center is the figure of a young child being kissed on the cheek by an angelic face which emerges from a mass of flowers; the right hand side suggests mankind's yearning for peace, its prophets and its victims, and symbols of law. On the left are depicted motherhood and people struggling for peace.

The cover design is courtesy of the graphic designer, Sean Bacon.

# **INTERNATIONAL LAW HANDBOOK**

## **COLLECTION OF INSTRUMENTS**



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**BOOK ONE**



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## FOREWORD

The *International Law Handbook* was prepared by the Codification Division of the Office of Legal Affairs under the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, pursuant to General Assembly resolution 70/116 of 14 December 2015.

Ambassador Emmanuel K. Dadzie of Ghana proposed the establishment of this programme when he served as Vice-Chairman of the Sixth Committee of the General Assembly at its 18th session in 1963. Following efforts led by Afghanistan, Belgium, Ghana and Ireland, the General Assembly decided, by resolution 2099 (XX) of 20 December 1965, to establish the Programme of Assistance to contribute towards a better knowledge of international law as a means of strengthening international peace and security and promoting friendly relations and cooperation among States.

The *International Law Handbook* is a collection of instruments used by the Codification Division as study materials for its training courses under the Programme of Assistance. This publication was prepared to celebrate the fiftieth anniversary of the establishment of the Programme in 2015 and to promote the teaching and dissemination of international law around the world. It is available on the United Nations Programme of Assistance website as well as the Audiovisual Library of International Law free of charge.\* It may be reproduced for academic purposes to further the teaching and dissemination of international law anywhere in the world.

The *International Law Handbook* is intended to be used as a general work of reference. It comprises four books:

Book One contains the Charter of the United Nations and the Statute of the International Court of Justice, as well as instruments relating to the law of treaties, subjects of international law, diplomatic and consular relations, international responsibility, peaceful settlement of international disputes, international peace and security, international human rights law as well as movement of persons and international migration law.

Book Two contains instruments relating to the law of armed conflict, international criminal law as well as disarmament and non-proliferation.

Book Three contains instruments relating to the law of the sea, international environmental law and international watercourses.

Book Four contains instruments relating to international labour law, law of cultural relations as well as international trade and investment law.

For ease of reference, each book includes an overview of the content of all four books, as well as a detailed table of contents for each respective volume.

The present collection of international instruments is not exhaustive. The texts incorporate amendments and corrections to the instruments subsequent to their entry into force, as appropriate, and whether or not the amendments have entered into force for all parties. Only the texts of the instruments as kept in the custody of the respective depositary constitute the authentic versions. The *International Law Handbook* is issued for information and educational purposes only.

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\* See, respectively, <http://legal.un.org/poa/> and <http://legal.un.org/avl/>.



## **Chapter I**

# **CHARTER OF THE UNITED NATIONS AND STATUTE OF THE INTERNATIONAL COURT OF JUSTICE**



# 1. CHARTER OF THE UNITED NATIONS

Done at San Francisco on 26 June 1945

Entry into force: 24 October 1945

We the peoples of the United Nations

determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,  
and for these ends

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

## CHAPTER I: PURPOSES AND PRINCIPLES

### Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

### Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

## **CHAPTER II: MEMBERSHIP**

### **Article 3**

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110.

### **Article 4**

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

### **Article 5**

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

### **Article 6**

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

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**CHAPTER III: ORGANS**

**Article 7**

1. There are established as principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

**Article 8**

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

**CHAPTER IV: THE GENERAL ASSEMBLY**

**COMPOSITION**

**Article 9**

1. The General Assembly shall consist of all the Members of the United Nations.
2. Each Member shall have not more than five representatives in the General Assembly.

**FUNCTIONS AND POWERS**

**Article 10**

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

**Article 11**

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

**Article 12**

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

#### **Article 13**

1. The General Assembly shall initiate studies and make recommendations for the purpose of:
  - a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;
  - b. promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

#### **Article 14**

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

#### **Article 15**

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.
2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

#### **Article 16**

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

#### **Article 17**

1. The General Assembly shall consider and approve the budget of the Organization.
2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.
3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

#### **VOTING**

#### **Article 18**

1. Each member of the General Assembly shall have one vote.
2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent

members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

#### **Article 19**

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

#### **PROCEDURE**

#### **Article 20**

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

#### **Article 21**

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

#### **Article 22**

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

### **CHAPTER V: THE SECURITY COUNCIL**

#### **COMPOSITION**

#### **Article 23**

1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

**FUNCTIONS AND POWERS****Article 24**

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

**Article 25**

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

**Article 26**

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

**VOTING****Article 27**

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

**PROCEDURE****Article 28**

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

**Article 29**

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

**Article 30**

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

**Article 31**

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

**Article 32**

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

**CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES****Article 33**

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

**Article 34**

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

**Article 35**

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

**Article 36**

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

**Article 37**

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

**Article 38**

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

**CHAPTER VII: ACTION WITH RESPECT TO THREATS TO THE PEACE,  
BREACHES OF THE PEACE, AND ACTS OF AGGRESSION****Article 39**

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

**Article 40**

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

**Article 41**

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

**Article 42**

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

**Article 43**

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

#### **Article 44**

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

#### **Article 45**

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

#### **Article 46**

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

#### **Article 47**

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

#### **Article 48**

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

#### **Article 49**

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

**Article 50**

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

**Article 51**

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

**CHAPTER VIII: REGIONAL ARRANGEMENTS****Article 52**

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

**Article 53**

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

**Article 54**

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

**CHAPTER IX: INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION****Article 55**

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

**Article 56**

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

**Article 57**

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

**Article 58**

The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

**Article 59**

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

**Article 60**

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

**CHAPTER X: THE ECONOMIC AND SOCIAL COUNCIL****COMPOSITION****Article 61**

1. The Economic and Social Council shall consist of fifty-four Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, eighteen members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election after the increase in the membership of the Economic and Social Council from twenty-seven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

### **FUNCTIONS AND POWERS**

#### **Article 62**

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

#### **Article 63**

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

#### **Article 64**

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

#### **Article 65**

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

#### **Article 66**

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

**VOTING****Article 67**

1. Each member of the Economic and Social Council shall have one vote.
2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

**PROCEDURE****Article 68**

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

**Article 69**

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

**Article 70**

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

**Article 71**

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

**Article 72**

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

**CHAPTER XI: DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES****Article 73**

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

#### **Article 74**

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

### **CHAPTER XII: INTERNATIONAL TRUSTEESHIP SYSTEM**

#### **Article 75**

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

#### **Article 76**

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

#### **Article 77**

1 The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

- a. territories now held under mandate;
- b. territories which may be detached from enemy states as a result of the Second World War; and
- c. territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

**Article 78**

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

**Article 79**

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

**Article 80**

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

**Article 81**

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

**Article 82**

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

**Article 83**

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

**Article 84**

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory.

**Article 85**

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly shall assist the General Assembly in carrying out these functions.

**CHAPTER XIII: THE TRUSTEESHIP COUNCIL****COMPOSITION****Article 86**

1. The Trusteeship Council shall consist of the following Members of the United Nations:

- a. those Members administering trust territories;
- b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
- c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

**FUNCTIONS AND POWERS****Article 87**

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.

**Article 88**

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

**VOTING****Article 89**

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

**PROCEDURE****Article 90**

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

**Article 91**

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

**CHAPTER XIV: THE INTERNATIONAL COURT OF JUSTICE****Article 92**

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

**Article 93**

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

**Article 94**

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

**Article 95**

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

**Article 96**

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

**CHAPTER XV: THE SECRETARIAT****Article 97**

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

**Article 98**

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

**Article 99**

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

**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.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

**CHAPTER XVI: MISCELLANEOUS PROVISIONS****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.

**Article 103**

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

**Article 104**

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

**Article 105**

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

**CHAPTER XVII: TRANSITIONAL SECURITY ARRANGEMENTS****Article 106**

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, 30 October 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

**Article 107**

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

**CHAPTER XVIII: AMENDMENTS****Article 108**

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

**Article 109**

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes

by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

## **CHAPTER XIX: RATIFICATION AND SIGNATURE**

### **Article 110**

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

### **Article 111**

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

In faith whereof the representatives of the Governments of the United Nations have signed the present Charter.

Done at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

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## 2. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Done at San Francisco on 26 June 1945

Entry into force: 24 October 1945

### Article 1

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

### CHAPTER I. ORGANIZATION OF THE COURT

#### Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

#### Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

#### Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

#### Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

**Article 6**

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

**Article 7**

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

**Article 8**

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

**Article 9**

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

**Article 10**

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

**Article 11**

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

**Article 12**

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

**Article 13**

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

**Article 14**

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

**Article 15**

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

**Article 16**

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

**Article 17**

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

**Article 18**

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

**Article 19**

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

**Article 20**

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

**Article 21**

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.
2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

**Article 22**

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.
2. The President and the Registrar shall reside at the seat of the Court.

**Article 23**

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.
2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.
3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

**Article 24**

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.
2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.
3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

**Article 25**

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.
2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.
3. A quorum of nine judges shall suffice to constitute the Court.

**Article 26**

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.
2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.
3. Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

**Article 27**

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

**Article 28**

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

**Article 29**

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

**Article 30**

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

**Article 31**

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfill the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

**Article 32**

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

### Article 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

## CHAPTER II. COMPETENCE OF THE COURT

### Article 34

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

### Article 35

1. The Court shall be open to the states parties to the present Statute.

2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court

### Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

**Article 37**

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

**Article 38**

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

**CHAPTER III. PROCEDURE****Article 39**

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

**Article 40**

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

**Article 41**

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

**Article 42**

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

#### **Article 43**

1. The procedure shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

#### **Article 44**

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

#### **Article 45**

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

#### **Article 46**

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

#### **Article 47**

1. Minutes shall be made at each hearing and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

#### **Article 48**

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

#### **Article 49**

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

#### **Article 50**

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

**Article 51**

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

**Article 52**

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

**Article 53**

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

**Article 54**

1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

**Article 55**

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

**Article 56**

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

**Article 57**

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

**Article 58**

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

**Article 59**

The decision of the Court has no binding force except between the parties and in respect of that particular case.

**Article 60**

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

**Article 61**

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

**Article 62**

1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

**Article 63**

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

**Article 64**

Unless otherwise decided by the Court, each party shall bear its own costs.

**CHAPTER IV. ADVISORY OPINIONS****Article 65**

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

**Article 66**

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

#### **Article 67**

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

#### **Article 68**

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

### **CHAPTER V. AMENDMENT**

#### **Article 69**

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

#### **Article 70**

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

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**Chapter II**  
**LAW OF TREATIES**



### 3. VIENNA CONVENTION ON THE LAW OF TREATIES

Done at Vienna on 23 May 1969

Entry into force: 27 January 1980

United Nations, *Treaty Series*, vol. 1155, p. 331; Reg. No. 18232

*The States Parties to the present Convention,*

*Considering* the fundamental role of treaties in the history of international relations,

*Recognizing* the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations, whatever their constitutional and social systems,

*Noting* that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

*Affirming* that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

*Recalling* the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Believing* that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of cooperation among nations,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed* as follows:

#### PART I. INTRODUCTION

##### Article 1. Scope of the present Convention

The present Convention applies to treaties between States.

##### 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;

(b) “ratification,” “acceptance,” “approval” and “accession” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(c) “full powers” means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) “reservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(e) “negotiating State” means a State which took part in the drawing up and adoption of the text of the treaty;

(f) “contracting State” means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;

(h) “third State” means a State not a party to the treaty;

(i) “international organization” means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

### **Article 3. International agreements not within the scope of the present Convention**

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(a) the legal force of such agreements;

(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

### **Article 4. Non-retroactivity of the present Convention**

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

### **Article 5. Treaties constituting international organizations and treaties adopted within an international organization**

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

## **PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES**

### **SECTION 1. CONCLUSION OF TREATIES**

#### **Article 6. Capacity of States to conclude treaties**

Every State possesses capacity to conclude treaties.

#### **Article 7. Full powers**

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(a) he produces appropriate full powers; or

(b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

#### **Article 8. Subsequent confirmation of an act performed without authorization**

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

#### **Article 9. Adoption of the text**

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

#### **Article 10. Authentication of the text**

The text of a treaty is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

#### **Article 11. Means of expressing consent to be bound by a treaty**

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

#### **Article 12. Consent to be bound by a treaty expressed by signature**

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(a) the treaty provides that signature shall have that effect;

(b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or

(c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(b) the signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

**Article 13. Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty**

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) the instruments provide that their exchange shall have that effect; or

(b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

**Article 14. Consent to be bound by a treaty expressed by ratification, acceptance or approval**

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) the treaty provides for such consent to be expressed by means of ratification;

(b) it is otherwise established that the negotiating States were agreed that ratification should be required;

(c) the representative of the State has signed the treaty subject to ratification; or

(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

**Article 15. Consent to be bound by a treaty expressed by accession**

The consent of a State to be bound by a treaty is expressed by accession when:

(a) the treaty provides that such consent may be expressed by that State by means of accession;

(b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

**Article 16. Exchange or deposit of instruments of ratification, acceptance, approval or accession**

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

(a) their exchange between the contracting States;

(b) their deposit with the depositary; or

(c) their notification to the contracting States or to the depositary, if so agreed.

**Article 17. Consent to be bound by part of a treaty and choice of differing provisions**

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

**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.

**SECTION 2. RESERVATIONS****Article 19. Formulation of reservations**

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

**Article 20. Acceptance of and objection to reservations**

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

**Article 21. Legal effects of reservations and of objections to reservations**

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

#### **Article 22. Withdrawal of reservations and of objections to reservations**

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

#### **Article 23. Procedure regarding reservations**

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

### **SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES**

#### **Article 24. Entry into force**

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

#### **Article 25. Provisional application**

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

- (a) the treaty itself so provides; or
- (b) the negotiating States have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

### **PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES**

#### **SECTION 1. OBSERVANCE OF TREATIES**

##### **Article 26. "Pacta sunt servanda"**

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

##### **Article 27. Internal law and observance of treaties**

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

#### **SECTION 2. APPLICATION OF TREATIES**

##### **Article 28. Non-retroactivity of treaties**

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

##### **Article 29. Territorial scope of treaties**

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

##### **Article 30. Application of successive treaties relating to the same subject matter**

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

- (a) as between States Parties to both treaties the same rule applies as in paragraph 3;
- (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

**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.

**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.

**Article 33. Interpretation of treaties authenticated in two or more languages**

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

**SECTION 4. TREATIES AND THIRD STATES****Article 34. General rule regarding third States**

A treaty does not create either obligations or rights for a third State without its consent.

**Article 35. Treaties providing for obligations for third States**

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

**Article 36. Treaties providing for rights for third States**

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

**Article 37. Revocation or modification of obligations or rights of third States**

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

**Article 38. Rules in a treaty becoming binding on third States through international custom**

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

**PART IV. AMENDMENT AND MODIFICATION OF TREATIES****Article 39. General rule regarding the amendment of treaties**

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide.

**Article 40. Amendment of multilateral treaties**

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

- (a) the decision as to the action to be taken in regard to such proposal;
- (b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

- (a) be considered as a party to the treaty as amended; and
- (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

**Article 41. Agreements to modify multilateral treaties  
between certain of the parties only**

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

- (a) the possibility of such a modification is provided for by the treaty; or
- (b) the modification in question is not prohibited by the treaty and:
  - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
  - (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

**PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES**

**SECTION 1. GENERAL PROVISIONS**

**Article 42. Validity and continuance in force of treaties**

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

**Article 43. Obligations imposed by international law independently of a treaty**

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

**Article 44. Separability of treaty provisions**

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

- (a) the said clauses are separable from the remainder of the treaty with regard to their application;
- (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
- (c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

**Article 45. Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty**

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

**SECTION 2. INVALIDITY OF TREATIES**

**Article 46. Provisions of internal law regarding competence to conclude treaties**

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

**Article 47. Specific restrictions on authority to express the consent of a State**

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

**Article 48. Error**

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

**Article 49. Fraud**

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

**Article 50. Corruption of a representative of a State**

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

**Article 51. Coercion of a representative of a State**

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

**Article 52. Coercion of a State by the threat or use of force**

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

**Article 53. Treaties conflicting with a peremptory norm of general international law ("jus cogens")**

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

**SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES**

**Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties**

The termination of a treaty or the withdrawal of a party may take place:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the other contracting States.

**Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force**

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

**Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal**

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

- (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
- (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

**Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties**

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the other contracting States.

**Article 58. Suspension of the operation of a multilateral treaty  
by agreement between certain of the parties only**

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

- (a) the possibility of such a suspension is provided for by the treaty; or
- (b) the suspension in question is not prohibited by the treaty and:
  - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
  - (ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

**Article 59. Termination or suspension of the operation of a treaty  
implied by conclusion of a later treaty**

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

- (a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or
- (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

**Article 60. Termination or suspension of the operation  
of a treaty as a consequence of its breach**

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

- (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
  - (i) in the relations between themselves and the defaulting State; or
  - (ii) as between all the parties;
- (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
- (c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

- (a) a repudiation of the treaty not sanctioned by the present Convention; or
- (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

#### **Article 61. Supervening impossibility of performance**

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

#### **Article 62. Fundamental change of circumstances**

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

#### **Article 63. Severance of diplomatic or consular relations**

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except insofar as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

#### **Article 64. Emergence of a new peremptory norm of general international law ("jus cogens")**

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

### **SECTION 4. PROCEDURE**

#### **Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty**

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

#### **Article 66. Procedures for judicial settlement, arbitration and conciliation**

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(a) any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

#### **Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty**

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act of declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

#### **Article 68. Revocation of notifications and instruments provided for in articles 65 and 67**

A notification or instrument provided for in article 65 or 67 may be revoked at any time before it takes effect.

### **SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY**

#### **Article 69. Consequences of the invalidity of a treaty**

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under article 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

#### **Article 70. Consequences of the termination of a treaty**

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

- (a) releases the parties from any obligation further to perform the treaty;
- (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

#### **Article 71. Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law**

1. In the case of a treaty which is void under article 53 the parties shall:

- (a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and
- (b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

- (a) releases the parties from any obligation further to perform the treaty;
- (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

#### **Article 72. Consequences of the suspension of the operation of a treaty**

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

- (a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;
- (b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

### **PART VI. MISCELLANEOUS PROVISIONS**

#### **Article 73. Cases of State succession, State responsibility and outbreak of hostilities**

The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

#### **Article 74. Diplomatic and consular relations and the conclusion of treaties**

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

**Article 75. Case of an aggressor State**

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

**PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION****Article 76. Depositaries of treaties**

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

**Article 77. Functions of depositaries**

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;

(e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

**Article 78. Notifications and communications**

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(a) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;

(b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1 (e).

#### Article 79. Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

#### Article 80. Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

### PART VIII. FINAL PROVISIONS

#### Article 81. Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

**Article 82. Ratification**

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 83. Accession**

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 84. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article 85. Authentic texts**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this twenty-third day of May, one thousand nine hundred and sixty-nine.

**ANNEX**

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International

Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

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#### 4. VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF TREATIES

Done at Vienna on 23 August 1978

Entry into force: 6 November 1996

United Nations, *Treaty Series*, vol. 1946, p. 3; Reg. No. 33356

*The States Parties to the present Convention,*

*Considering* the profound transformation of the international community brought about by the decolonization process,

*Considering also* that other factors may lead to cases of succession of States in the future,

*Convinced*, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of treaties as a means for ensuring greater juridical security in international relations,

*Noting* that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

*Emphasizing* that the consistent observance of general multilateral treaties which deal with the codification and progressive development of international law and those the object and purpose of which are of interest to the international community as a whole is of special importance for the strengthening of peace and international cooperation,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Recalling* that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969,

*Bearing also in mind* article 73 of that Convention,

*Affirming* that questions of the law of treaties other than those that may arise from a succession of States are governed by the relevant rules of international law, including those rules of customary international law which are embodied in the Vienna Convention on the Law of Treaties of 1969,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed* as follows:

## **PART I. GENERAL PROVISIONS**

### **Article 1. Scope of the present Convention**

The present Convention applies to the effects of a succession of States in respect of treaties between States.

### **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;

(b) “succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;

(c) “predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;

(d) “successor State” means the State which has replaced another State on the occurrence of a succession of States;

(e) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(f) “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

(g) “notification of succession” means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty;

(h) “full powers” means in relation to a notification of succession or any other notification under the present Convention a document emanating from the competent authority of a State designating a person or persons to represent the State for communicating the notification of succession or, as the case may be, the notification;

(i) “ratification,” “acceptance” and “approval” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(j) “reservation” means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(k) “contracting State” means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(l) “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;

(m) “other State party” means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;

(n) “international organization” means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

### **Article 3. Cases not within the scope of the present Convention**

The fact that the present Convention does not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

(a) the application to such cases of any of the rules set forth in the present Convention to which they are subject under international law independently of the Convention;

(b) the application as between States of the present Convention to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

### **Article 4. Treaties constituting international organizations and treaties adopted within an international organization**

The present Convention applies to the effects of a succession of States in respect of:

(a) any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;

(b) any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

### **Article 5. Obligations imposed by international law independently of a treaty**

The fact that a treaty is not considered to be in force in respect of a State by virtue of the application of the present Convention shall not in any way impair the duty of that State to fulfil any obligation embodied in the treaty to which it is subject under international law independently of the treaty.

### **Article 6. Cases of succession of States covered by the present Convention**

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

### **Article 7. Temporal application of the present Convention**

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the

Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration, of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

#### **Article 8. Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State**

1. The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States Parties to those treaties by reason only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

2. Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

#### **Article 9. Unilateral declaration by a successor State regarding treaties of the predecessor State**

1. Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State or of other States Parties to those treaties by reason only of the fact that the successor State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory.

2. In such a case, the effects of the succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

#### **Article 10. Treaties providing for the participation of a successor State**

1. When a treaty provides that, on the occurrence of a succession of States, a successor State shall have the option to consider itself a party to the treaty, it may notify its succession in respect of the treaty in conformity with the provisions of the treaty or, failing any such provisions, in conformity with the provisions of the present Convention.

2. If a treaty provides that, on the occurrence of a succession of States, a successor State shall be considered as a party to the treaty, that provision takes effect as such only if the successor State expressly accepts in writing to be so considered.

3. In cases falling under paragraph 1 or 2, a successor State which establishes its consent to be a party to the treaty is considered as a party from the date of the succession of States unless the treaty otherwise provides or it is otherwise agreed.

### Article 11. Boundary regimes

A succession of States does not as such affect:

- (a) a boundary established by a treaty; or
- (b) obligations and rights established by a treaty and relating to the regime of a boundary.

### Article 12. Other territorial regimes

1. A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

(b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

(b) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

3. The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

### Article 13. The present Convention and permanent sovereignty over natural wealth and resources

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.

### Article 14. Questions relating to the validity of a treaty

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the validity of a treaty.

## PART II. SUCCESSION IN RESPECT OF PART OF TERRITORY

### Article 15. Succession in respect of part of territory

When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:

(a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and

(b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

**PART III. NEWLY INDEPENDENT STATES****SECTION 1. GENERAL RULE****Article 16. Position in respect of the treaties of the predecessor State**

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

**SECTION 2. MULTILATERAL TREATIES****Article 17. Participation in treaties in force at the date of the succession of States**

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a party to any multilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

**Article 18. Participation in treaties not in force at the date of the succession of States**

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.

5. When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be counted as a contracting State for the purpose of that provision unless a different intention appears from the treaty, or is otherwise established.

**Article 19. Participation in treaties signed by the predecessor State  
subject to ratification, acceptance or approval**

1. Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance or approval and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

#### **Article 20. Reservations**

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under article 17 or 18, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty under article 17 or 18, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of article 19 of the Vienna Convention on the Law of Treaties.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20 to 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

#### **Article 21. Consent to be bound by part of a treaty and choice between differing provisions**

1. When making a notification of succession under article 17 or 18 establishing its status as a party or contracting State to a multilateral treaty, a newly independent State may, if the treaty so permits, express its consent to be bound by part of the treaty or make a choice between differing provisions under the conditions laid down in the treaty for expressing such consent or making such choice.

2. A newly independent State may also exercise, under the same conditions as the other parties or contracting States, any right provided for in the treaty to withdraw or modify any consent expressed or choice made by itself or by the predecessor State in respect of the territory to which the succession of States relates.

3. If the newly independent State does not in conformity with paragraph 1 express its consent or make a choice, or in conformity with paragraph 2 withdraw or modify the consent or choice of the predecessor State, it shall be considered as maintaining:

(a) the consent of the predecessor State, in conformity with the treaty, to be bound, in respect of the territory to which the succession of States relates, by part of that treaty; or

(b) the choice of the predecessor State, in conformity with the treaty, between differing provisions in the application of the treaty in respect of the territory to which the succession of States relates.

#### **Article 22. Notification of succession**

1. A notification of succession in respect of a multilateral treaty under article 17 or 18 shall be made in writing.

2. If the notification of succession is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification of succession shall:

(a) be transmitted by the newly independent State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the newly independent State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification of succession or any communication made in connection therewith by the newly independent State.

5. Subject to the provisions of the treaty, the notification of succession or the communication made in connection therewith shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

### **Article 23. Effects of a notification of succession**

1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17 or article 18, paragraph 2, shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

2. Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except insofar as that treaty may be applied provisionally in accordance with article 27 or as may be otherwise agreed.

3. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 18, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

## **SECTION 3. BILATERAL TREATIES**

### **Article 24. Conditions under which a treaty is considered as being in force in the case of a succession of States**

1. A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.

2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

### **Article 25. The position as between the predecessor State and the newly independent State**

A treaty which under article 24 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as being in force also in the relations between the predecessor State and the newly independent State.

**Article 26. Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party**

1. When under article 24 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:

(a) does not cease to be in force between them by reason only of the fact that it has subsequently been terminated as between the predecessor State and the other State party;

(b) is not suspended in operation as between them by reason only of the fact that it has subsequently been suspended in operation as between the predecessor State and the other State party;

(c) is not amended as between them by reason only of the fact that it has subsequently been amended as between the predecessor State and the other State party.

2. The fact that a treaty has been terminated or, as the case may be, suspended in operation as between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered to be in force or, as the case may be, in operation as between the newly independent State and the other State party if it is established in accordance with article 24 that they so agreed.

3. The fact that a treaty has been amended as between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered to be in force under article 24 as between the newly independent State and the other State party, unless it is established that they intended the treaty as amended to apply between them.

**SECTION 4. PROVISIONAL APPLICATION**

**Article 27. Multilateral treaties**

1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the parties to such provisional application is required.

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

4. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the contracting States to such continued provisional application is required.

5. Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

**Article 28. Bilateral treaties**

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.

**Article 29. Termination of provisional application**

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 may be terminated:

(a) by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty and the expiration of the notice; or

(b) in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, by reasonable notice of termination given by the newly independent State or all of the parties or, as the case may be, all of the contracting States and the expiration of the notice.

2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 28 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned and the expiration of the notice.

3. Unless the treaty provides for a shorter period for its termination or it is otherwise agreed, reasonable notice of termination shall be twelve months' notice from the date on which it is received by the other State or States provisionally applying the treaty.

4. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

**SECTION 5. NEWLY INDEPENDENT STATES FORMED FROM TWO OR MORE TERRITORIES****Article 30. Newly independent States formed from two or more territories**

1. Articles 16 to 29 apply in the case of a newly independent State formed from two or more territories.

2. When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of article 17, 18 or 24 and at the date of the succession of States the treaty was in force, or consent to be bound had been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b) in the case of a multilateral treaty not falling under article 17, paragraph 3, or under article 18, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;

(c) in the case of a multilateral treaty falling under article 17, paragraph 3, or under article 18, paragraph 4, the newly independent State and the other States Parties or, as the case may be, the other contracting States otherwise agree; or

(d) in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.

3. When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 19 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of the newly independent State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b) in the case of a multilateral treaty not falling under article 19, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or

(c) in the case of a multilateral treaty falling under article 19, paragraph 4, the newly independent State and the other States Parties or, as the case may be, the other contracting States otherwise agree.

#### **PART IV. UNITING AND SEPARATION OF STATES**

##### **Article 31. Effects of a uniting of States in respect of treaties in force at the date of the succession of States**

1. When two or more States unite and so form one successor State, any treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State unless:

- (a) the successor State and the other State party or States Parties otherwise agree; or
- (b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

2. Any treaty continuing in force in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of the succession of States unless:

- (a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State makes a notification that the treaty shall apply in respect of its entire territory;
- (b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and the other States Parties otherwise agree; or
- (c) in the case of a bilateral treaty, the successor State and the other State party otherwise agree.

3. Paragraph 2 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

##### **Article 32. Effects of a uniting of States in respect of treaties not in force at the date of the succession of States**

1. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States was a contracting State to the treaty.

2. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if, at that date, any of the predecessor States was a contracting State to the treaty.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

5. Any treaty to which the successor State becomes a contracting State or a party in conformity with paragraph 1 or 2 shall apply only in respect of the part of the territory of the successor State in respect of which consent to be bound by the treaty had been given prior to the date of the succession of States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State indicates in its notification made under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

6. Paragraph 5 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

### **Article 33. Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval**

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling under article 31 may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

4. Any treaty to which the successor State becomes a party or a contracting State in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was signed by one of the predecessor States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

5. Paragraph 4 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

### **Article 34. Succession of States in cases of separation of parts of a State**

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

**Article 35. Position if a State continues after separation of part of its territory**

When, after separation of any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

- (a) the States concerned otherwise agree;
- (b) it is established that the treaty related only to the territory which has separated from the predecessor State; or
- (c) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

**Article 36. Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State**

1. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

2. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

**Article 37. Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval**

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling under article 34, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

**Article 38. Notifications**

- 1. Any notification under articles 31, 32 or 36 shall be made in writing.

2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification shall:

(a) be transmitted by the successor State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the successor State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connection therewith by the successor State.

5. Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

## **PART V. MISCELLANEOUS PROVISIONS**

### **Article 39. Cases of State responsibility and outbreak of hostilities**

The provisions of the present Convention shall not prejudice any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

### **Article 40. Cases of military occupation**

The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from the military occupation of a territory.

## **PART VI. SETTLEMENT OF DISPUTES**

### **Article 41. Consultation and negotiation**

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

### **Article 42. Conciliation**

If the dispute is not resolved within six months of the date on which the request referred to in article 41 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

### **Article 43. Judicial settlement and arbitration**

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 41 and 42, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

**Article 44. Settlement by common consent**

Notwithstanding articles 41, 42 and 43, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

**Article 45. Other provisions in force for the settlement of disputes**

Nothing in articles 41 to 44 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

**PART VII. FINAL PROVISIONS****Article 46. Signature**

The present Convention shall be open for signature by all States until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 31 August 1979, at United Nations Headquarters in New York.

**Article 47. Ratification**

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 48. Accession**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 49. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article 50. Authentic texts**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this twenty-third day of August, one thousand nine hundred and seventy-eight.

**ANNEX**

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 42, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

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## 5. VIENNA CONVENTION ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS

Done at Vienna on 21 March 1986

Not yet in force

United Nations, Doc. A/CONF.129/15

*The Parties to the present Convention,*

*Considering* the fundamental role of treaties in the history of international relations,

*Recognizing* the consensual nature of treaties and their ever-increasing importance as a source of international law,

*Noting* that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

*Affirming* the importance of enhancing the process of codification and progressive development of international law at a universal level,

*Believing that* the codification and progressive development of the rules relating to treaties between States and international organizations or between international organizations are means of enhancing legal order in international relations and of serving the purposes of the United Nations,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969,

*Recognizing* the relationship between the law of treaties between States and the law of treaties between States and international organizations or between international organizations,

*Considering* the importance of treaties between States and international organizations or between international organizations as a useful means of developing international relations and ensuring conditions for peaceful cooperation among nations, whatever their constitutional and social systems,

*Having in mind* the specific features of treaties to which international organizations are parties as subjects of international law distinct from States,

*Noting* that international organizations possess the capacity to conclude treaties, which is necessary for the exercise of their functions and the fulfilment of their purposes,

*Recognizing* that the practice of international organizations in concluding treaties with States or between themselves should be in accordance with their constituent instruments,

*Affirming* that nothing in the present Convention should be interpreted as affecting those relations between an international organization and its members which are regulated by the rules of the organization,

*Affirming* also that disputes concerning treaties, like other international disputes, should be settled, in conformity with the Charter of the United Nations, by peaceful means and in conformity with the principles of justice and international law,

*Affirming* also that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed* as follows:

## PART I. INTRODUCTION

### Article 1. Scope of the present Convention

The present Convention applies to:

- (a) treaties between one or more States and one or more international organizations, and
- (b) treaties between international organizations.

### Article 2. Use of terms

1. For the purposes of the present Convention:

(a) “treaty” means an international agreement governed by international law and concluded in written form:

- (i) between one or more States and one or more international organizations; or
- (ii) between international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) “ratification” means the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(b *bis*) “act of formal confirmation” means an international act corresponding to that of ratification by a State, whereby an international organization establishes on the international plane its consent to be bound by a treaty;

(b *ter*) “acceptance,” “approval” and “accession” mean in each case the international act so named whereby a State or an international organization establishes on the international plane its consent to be bound by a treaty;

(c) “full powers” means a document emanating from the competent authority of a State or from the competent organ of an international organization designating a person or persons to represent the State or the organization for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State or of the organization to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) “reservation” means a unilateral statement, however phrased or named, made by a State or by an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that organization;

(e) “negotiating State” and “negotiating organization” mean respectively:

- (i) a State, or
- (ii) an international organization,

which took part in the drawing up and adoption of the text of the treaty;

(f) “contracting State” and “contracting organization” mean respectively:

- (i) a State, or
- (ii) an international organization,

which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) “party” means a State or an international organization which has consented to be bound by the treaty and for which the treaty is in force;

(h) “third State” and “third organization” mean respectively:

- (i) a State, or
- (ii) an international organization,

not a party to the treaty;

(i) “international organization” means an intergovernmental organization;

(j) “rules of the organization” means, in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State or in the rules of any international organization.

### **Article 3. International agreements not within the scope of the present Convention**

The fact that the present Convention does not apply:

- (i) to international agreements to which one or more States, one or more international organizations and one or more subjects of international law other than States or organizations are parties;
- (ii) to international agreements to which one or more international organizations and one or more subjects of international law other than States or organizations are parties;
- (iii) to international agreements not in written form between one or more States and one or more international organizations, or between international organizations; or
- (iv) to international agreements between subjects of international law other than States or international organizations;

shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
- (c) the application of the Convention to the relations between States and international organizations or to the relations of organizations as between themselves, when those relations are governed by international agreements to which other subjects of international law are also parties.

### **Article 4. Non-retroactivity of the present Convention**

Without prejudice to the application of any rules set forth in the present Convention to which treaties between one or more States and one or more international organizations or between international organizations would be subject under international law independently of the Convention, the Convention applies only to such treaties concluded after the entry into force of the present Convention with regard to those States and those organizations.

### **Article 5. Treaties constituting international organizations and treaties adopted within an international organization**

The present Convention applies to any treaty between one or more States and one or more international organizations which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

## **PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES**

### **SECTION 1. CONCLUSION OF TREATIES**

#### **Article 6. Capacity of international organizations to conclude treaties**

The capacity of an international organization to conclude treaties is governed by the rules of that organization.

### Article 7. Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(a) that person produces appropriate full powers; or

(b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the State for such purposes without having to produce full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty between one or more States and one or more international organizations;

(b) representatives accredited by States to an international conference, for the purpose of adopting the text of a treaty between States and international organizations;

(c) representatives accredited by States to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that organization or organ;

(d) heads of permanent missions to an international organization, for the purpose of adopting the text of a treaty between the accrediting States and that organization.

3. A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty, or expressing the consent of that organization to be bound by a treaty, if:

(a) that person produces appropriate full powers; or

(b) it appears from the circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the organization for such purposes, in accordance with the rules of the organization, without having to produce full powers.

### Article 8. Subsequent confirmation of an act performed without authorization

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State or an international organization for that purpose is without legal effect unless afterwards confirmed by that State or that organization.

### Article 9. Adoption of the text

1. The adoption of the text of a treaty takes place by the consent of all the States and international organizations or, as the case may be, all the organizations participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place in accordance with the procedure agreed upon by the participants in that conference. If, however, no agreement is reached on any such procedure, the adoption of the text shall take place by the vote of two thirds of the participants present and voting unless by the same majority they shall decide to apply a different rule.

### Article 10. Authentication of the text

1. The text of a treaty between one or more States and one or more international organizations is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the States and organizations participating in its drawing up; or

(b) failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States and those organizations of the text of the treaty or of the Final Act of a conference incorporating the text.

2. The text of a treaty between international organizations is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the organizations participating in its drawing up; or

(b) failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States and those organizations of the text of the treaty or of the Final Act of a conference incorporating the text.

#### **Article 11. Means of expressing consent to be bound by a treaty**

1. The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

2. The consent of an international organization to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, act of formal confirmation, acceptance, approval or accession, or by any other means if so agreed.

#### **Article 12. Consent to be bound by a treaty expressed by signature**

1. The consent of a State or of an international organization to be bound by a treaty is expressed by the signature of the representative of that State or of that organization when:

(a) the treaty provides that signature shall have that effect;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that signature should have that effect; or

(c) the intention of the State or organization to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations so agreed;

(b) the signature *ad referendum* of a treaty by the representative of a State or an international organization, if confirmed by his State or organization, constitutes a full signature of the treaty.

#### **Article 13. Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty**

The consent of States or of international organizations to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) the instruments provide that their exchange shall have that effect; or

(b) it is otherwise established that those States and those organizations or, as the case may be, those organizations were agreed that the exchange of instruments should have that effect.

#### **Article 14. Consent to be bound by a treaty expressed by ratification, act of formal confirmation, acceptance or approval**

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) the treaty provides for such consent to be expressed by means of ratification;

(b) it is otherwise established that the negotiating States and negotiating organizations were agreed that ratification should be required;

(c) the representative of the State has signed the treaty subject to ratification; or

(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of an international organization to be bound by a treaty is expressed by an act of formal confirmation when:

(a) the treaty provides for such consent to be expressed by means of an act of formal confirmation;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that an act of formal confirmation should be required;

(c) the representative of the organization has signed the treaty subject to an act of formal confirmation; or

(d) the intention of the organization to sign the treaty subject to an act of formal confirmation appears from the full powers of its representative or was expressed during the negotiation.

3. The consent of a State or of an international organization to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification or, as the case may be, to an act of formal confirmation.

#### **Article 15. Consent to be bound by a treaty expressed by accession**

The consent of a State or of an international organization to be bound by a treaty is expressed by accession when:

(a) the treaty provides that such consent may be expressed by that State or that organization by means of accession;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that such consent may be expressed by that State or that organization by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State or that organization by means of accession.

#### **Article 16. Exchange or deposit of instruments of ratification, formal confirmation, acceptance, approval or accession**

1. Unless the treaty otherwise provides, instruments of ratification, instruments relating to an act of formal confirmation or instruments of acceptance, approval or accession establish the consent of a State or of an international organization to be bound by a treaty between one or more States and one or more international organizations upon:

(a) their exchange between the contracting States and contracting organizations;

(b) their deposit with the depositary; or

(c) their notification to the contracting States and to the contracting organizations or to the depositary, if so agreed.

2. Unless the treaty otherwise provides, instruments relating to an act of formal confirmation or instruments of acceptance, approval or accession establish the consent of an international organization to be bound by a treaty between international organizations upon:

(a) their exchange between the contracting organizations;

(b) their deposit with the depositary; or

(c) their notification to the contracting organizations or to the depositary, if so agreed.

**Article 17. Consent to be bound by part of a treaty and choice of differing provisions**

1. Without prejudice to articles 19 to 23, the consent of a State or of an international organization to be bound by part of a treaty is effective only if the treaty so permits, or if the contracting States and contracting organizations or, as the case may be, the contracting organizations so agree.

2. The consent of a State or of an international organization to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

**Article 18. Obligation not to defeat the object and purpose of a treaty prior to its entry into force**

A State or an international organization is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) that State or that organization has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, act of formal confirmation, acceptance or approval, until that State or that organization shall have made its intention clear not to become a party to the treaty; or

(b) that State or that organization 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.

**SECTION 2. RESERVATIONS**

**Article 19. Formulation of reservations**

A State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

**Article 20. Acceptance of and objection to reservations**

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the contracting States and contracting organizations or, as the case may be, by the contracting organizations unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and negotiating organizations or, as the case may be, of the negotiating organizations and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance of a reservation by a contracting State or by a contracting organization constitutes the reserving State or international organization a party to the treaty in relation to the accepting State or organization if or when the treaty is in force for the reserving State or organization and for the accepting State or organization;

(b) an objection by a contracting State or by a contracting organization to a reservation does not preclude the entry into force of the treaty as between the objecting State or international organization and the reserving State or organization unless a contrary intention is definitely expressed by the objecting State or organization;

(c) an act expressing the consent of a State or of an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one contracting State or one contracting organization has accepted the reservation.

5. For the purposes of paragraphs 2 and 4, and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State or an international organization if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

#### **Article 21. Legal effects of reservations and of objections to reservations**

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State or international organization in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State or international organization.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State or an international organization objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State or organization, the provisions to which the reservation relates do not apply as between the reserving State or organization and the objecting State or organization to the extent of the reservation.

#### **Article 22. Withdrawal of reservations and of objections to reservations**

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State or of an international organization which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

#### **Article 23. Procedure regarding reservations**

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

### **SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES**

#### **Article 24. Entry into force**

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States and negotiating organizations or, as the case may be, all the negotiating organizations.

3. When the consent of a State or of an international organization to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State or that organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of consent to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

#### **Article 25. Provisional application**

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

- (a) the treaty itself so provides; or
- (b) the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State or an international organization shall be terminated if that State or that organization notifies the States and organizations with regard to which the treaty is being applied provisionally of its intention not to become a party to the treaty.

### **PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES**

#### **SECTION 1. OBSERVANCE OF TREATIES**

##### **Article 26. *Pacta sunt servanda***

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

##### **Article 27. Internal law of States, rules of international organizations and observance of treaties**

1. A State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty.

2. An international organization party to a treaty may not invoke the rules of the organization as justification for its failure to perform the treaty.

3. The rules contained in the preceding paragraphs are without prejudice to article 46.

#### **SECTION 2. APPLICATION OF TREATIES**

##### **Article 28. Non-retroactivity of treaties**

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

**Article 29. Territorial scope of treaties**

Unless a different intention appears from the treaty or is otherwise established, a treaty between one or more States and one or more international organizations is binding upon each State party in respect of its entire territory.

**Article 30. Application of successive treaties relating to the same subject matter**

1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) as between two parties, each of which is a party to both treaties, the same rule applies as in paragraph 3;

(b) as between a party to both treaties and a party to only one of the treaties, the treaty to which both are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State or for an international organization from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards a State or an organization under another treaty.

6. The preceding paragraphs are without prejudice to the fact that, in the event of a conflict between obligations under the Charter of the United Nations and obligations under a treaty, the obligations under the Charter shall prevail.

**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.

### **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.

### **Article 33. Interpretation of treaties authenticated in two or more languages**

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of a treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

## **SECTION 4. TREATIES AND THIRD STATES OR THIRD ORGANIZATIONS**

### **Article 34. General rule regarding third States and third organizations**

A treaty does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization.

### **Article 35. Treaties providing for obligations for third States or third organizations**

An obligation arises for a third State or a third organization from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State or the third organization expressly accepts that obligation in writing. Acceptance by the third organization of such an obligation shall be governed by the rules of that organization.

### **Article 36. Treaties providing for rights for third States or third organizations**

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A right arises for a third organization from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third organization, or to a group of international organizations to which it belongs, or to all organizations, and the third organization assents thereto. Its assent shall be governed by the rules of the organization.

3. A State or an international organization exercising a right in accordance with paragraph 1 or 2 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

### **Article 37. Revocation or modification of obligations or rights of third States or third organizations**

1. When an obligation has arisen for a third State or a third organization in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the

treaty and of the third State or the third organization, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State or a third organization in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State or the third organization.

3. The consent of an international organization party to the treaty or of a third organization, as provided for in the foregoing paragraphs, shall be governed by the rules of that organization.

#### **Article 38. Rules in a treaty becoming binding on third States or third organizations through international custom**

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State or a third organization as a customary rule of international law, recognized as such.

### **PART IV. AMENDMENT AND MODIFICATION OF TREATIES**

#### **Article 39. General rule regarding the amendment of treaties**

1. A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide.

2. The consent of an international organization to an agreement provided for in paragraph 1 shall be governed by the rules of that organization.

#### **Article 40. Amendment of multilateral treaties**

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States and all the contracting organizations, each one of which shall have the right to take part in:

- (a) the decision as to the action to be taken in regard to such proposal;
- (b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State or international organization entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State or international organization already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State or organization.

5. Any State or international organization which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State or that organization:

- (a) be considered as a party to the treaty as amended; and
- (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

#### **Article 41. Agreements to modify multilateral treaties between certain of the parties only**

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

- (a) the possibility of such a modification is provided for by the treaty; or
- (b) the modification in question is not prohibited by the treaty and:

- (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
- (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

## **PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES**

### **SECTION 1. GENERAL PROVISIONS**

#### **Article 42. Validity and continuance in force of treaties**

1. The validity of a treaty or of the consent of a State or an international organization to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

#### **Article 43. Obligations imposed by international law independently of a treaty**

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State or of any international organization to fulfil any obligation embodied in the treaty to which that State or that organization would be subject under international law independently of the treaty.

#### **Article 44. Separability of treaty provisions**

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

- (a) the said clauses are separable from the remainder of the treaty with regard to their application;
- (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
- (c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State or international organization entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

**Article 45. Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty**

1. A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

2. An international organization may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of the conduct of the competent organ be considered as having renounced the right to invoke that ground.

**SECTION 2. INVALIDITY OF TREATIES**

**Article 46. Provisions of internal law of a State and rules of an international organization regarding competence to conclude treaties**

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of the rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

3. A violation is manifest if it would be objectively evident to any State or any international organization conducting itself in the matter in accordance with the normal practice of States and, where appropriate, of international organizations and in good faith.

**Article 47. Specific restrictions on authority to express the consent of a State or an international organization**

If the authority of a representative to express the consent of a State or of an international organization to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the negotiating States and negotiating organizations prior to his expressing such consent.

**Article 48. Error**

1. A State or an international organization may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State or that organization to exist at the time when the treaty was concluded and formed an essential basis of the consent of that State or that organization to be bound by the treaty.

2. Paragraph 1 shall not apply if the State or international organization in question contributed by its own conduct to the error or if the circumstances were such as to put that State or that organization on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 80 then applies.

#### **Article 49. Fraud**

A State or an international organization induced to conclude a treaty by the fraudulent conduct of a negotiating State or a negotiating organization may invoke the fraud as invalidating its consent to be bound by the treaty.

#### **Article 50. Corruption of a representative of a State or of an international organization**

A State or an international organization the expression of whose consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by a negotiating State or a negotiating organization may invoke such corruption as invalidating its consent to be bound by the treaty.

#### **Article 51. Coercion of a representative of a State or of an international organization**

The expression by a State or an international organization of consent to be bound by a treaty which has been procured by the coercion of the representative of that State or that organization through acts or threats directed against him shall be without any legal effect.

#### **Article 52. Coercion of a State or of an international organization by the threat or use of force**

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

#### **Article 53. Treaties conflicting with a peremptory norm of general international law (*jus cogens*)**

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

### **SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES**

#### **Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties**

The termination of a treaty or the withdrawal of a party may take place:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the contracting States and contracting organizations.

#### **Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force**

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

**Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal**

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

**Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties**

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the contracting States and contracting organizations.

**Article 58. Suspension of the operation of a multilateral treaty by agreement between certain of the parties only**

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(a) the possibility of such a suspension is provided for by the treaty; or

(b) the suspension in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

**Article 59. Termination or suspension of the operation of a treaty implied by conclusion of a later treaty**

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

**Article 60. Termination or suspension of the operation of a treaty as a consequence of its breach**

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

- (i) in the relations between themselves and the defaulting State or international organization; or
- (ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State or international organization;

(c) any party other than the defaulting State or international organization to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

- (a) a repudiation of the treaty not sanctioned by the present Convention; or
- (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

#### **Article 61. Supervening impossibility of performance**

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

#### **Article 62. Fundamental change of circumstances**

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty between two or more States and one or more international organizations if the treaty establishes a boundary.

3. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

4. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

#### **Article 63. Severance of diplomatic or consular relations**

The severance of diplomatic or consular relations between States Parties to a treaty between two or more States and one or more international organizations does not affect the legal relations established between those States by the treaty except insofar as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

#### **Article 64. Emergence of a new peremptory norm of general international law (*jus cogens*)**

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

### **SECTION 4. PROCEDURE**

#### **Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty**

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. The notification or objection made by an international organization shall be governed by the rules of that organization.

5. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

6. Without prejudice to article 45, the fact that a State or an international organization has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

#### **Article 66. Procedures for judicial settlement, arbitration and conciliation**

1. If, under paragraph 3 of article 65, no solution has been reached within a period of twelve months following the date on which the objection was raised, the procedures specified in the following paragraphs shall be followed.

2. With respect to a dispute concerning the application or the interpretation of article 53 or 64:

(a) if a State is a party to the dispute with one or more States, it may, by a written application, submit the dispute to the International Court of Justice for a decision;

(b) if a State is a party to the dispute to which one or more international organizations are parties, the State may, through a Member State of the United Nations if necessary, request the General Assembly or the Security Council or, where appropriate, the competent organ of an international organization which is a party to the dispute and is authorized in accordance with Article

96 of the Charter of the United Nations, to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court;

(c) if the United Nations or an international organization that is authorized in accordance with Article 96 of the Charter of the United Nations is a party to the dispute, it may request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court;

(d) if an international organization other than those referred to in subparagraph (c) is a party to the dispute, it may, through a Member State of the United Nations, follow the procedure specified in subparagraph (b);

(e) the advisory opinion given pursuant to subparagraph (b), (c) or (d) shall be accepted as decisive by all the parties to the dispute concerned;

(f) if the request under subparagraph (b), (c) or (d) for an advisory opinion of the Court is not granted, any one of the parties to the dispute may, by written notification to the other party or parties, submit it to arbitration in accordance with the provisions of the Annex to the present Convention.

3. The provisions of paragraph 2 apply unless all the parties to a dispute referred to in that paragraph by common consent agree to submit the dispute to an arbitration procedure, including the one specified in the Annex to the present Convention.

4. With respect to a dispute concerning the application or the interpretation of any of the articles in Part V, other than articles 53 and 64, of the present Convention, any one of the parties to the dispute may set in motion the conciliation procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

**Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty**

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument emanating from a State is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers. If the instrument emanates from an international organization, the representative of the organization communicating it may be called upon to produce full powers.

**Article 68. Revocation of notifications and instruments provided for in articles 65 and 67**

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

**SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY**

**Article 69. Consequences of the invalidity of a treaty**

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of the consent of a particular State or a particular international organization to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State or that organization and the parties to the treaty.

#### **Article 70. Consequences of the termination of a treaty**

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

- (a) releases the parties from any obligation further to perform the treaty;
- (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State or an international organization denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State or that organization and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

#### **Article 71. Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law**

1. In the case of a treaty which is void under article 53 the parties shall:

- (a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and
- (b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

- (a) releases the parties from any obligation further to perform the treaty;
- (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

#### **Article 72. Consequences of the suspension of the operation of a treaty**

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

- (a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;
- (b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

### **PART VI. MISCELLANEOUS PROVISIONS**

#### **Article 73. Relationship to the Vienna Convention on the Law of Treaties**

As between States Parties to the Vienna Convention on the Law of Treaties of 1969, the relations of those States under a treaty between two or more States and one or more international organizations shall be governed by that Convention.

#### **Article 74. Questions not prejudged by the present Convention**

1. The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty between one or more States and one or more international organizations from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

2. The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from the international responsibility of an international organization, from the termination of the existence of the organization or from the termination of participation by a State in the membership of the organization.

3. The provisions of the present Convention shall not prejudice any question that may arise in regard to the establishment of obligations and rights for States members of an international organization under a treaty to which that organization is a party.

#### **Article 75. Diplomatic and consular relations and the conclusion of treaties**

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between two or more of those States and one or more international organizations. The conclusion of such a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

#### **Article 76. Case of an aggressor State**

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty between one or more States and one or more international organizations which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

### **PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTONS AND REGISTRATION**

#### **Article 77. Depositaries of treaties**

1. The designation of the depositary of a treaty may be made by the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State or an international organization and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

#### **Article 78. Functions of depositaries**

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations or, as the case may be, by the contracting organizations, comprise in particular:

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States and international organizations entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State or international organization in question;

(e) informing the parties and the States and international organizations entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) informing the States and international organizations entitled to become parties to the treaty when the number of signatures or of instruments of ratification, instruments relating to an act of formal confirmation, or of instruments of acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of:

(a) the signatory States and organizations and the contracting States and contracting organizations; or

(b) where appropriate, the competent organ of the international organization concerned.

#### **Article 79. Notifications and communications**

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State or any international organization under the present Convention shall:

(a) if there is no depositary, be transmitted direct to the States and organizations for which it is intended, or if there is a depositary, to the latter;

(b) be considered as having been made by the State or organization in question only upon its receipt by the State or organization to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State or organization for which it was intended only when the latter State or organization has been informed by the depositary in accordance with article 78, paragraph 1(e).

#### **Article 80. Correction of errors in texts or in certified copies of treaties**

1. Where, after the authentication of the text of a treaty, the signatory States and international organizations and the contracting States and contracting organizations are agreed that it contains an error, the error shall, unless those States and organizations decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and international organizations and the contracting States and contracting organizations of the error and of the proposal to correct it and shall specify an appropriate time limit within which objection to the proposed correction may be raised. If, on the expiry of the time limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text and communicate a copy of it to the parties and to the States and organizations entitled to become parties to the treaty;

(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and organizations and to the contracting States and contracting organizations.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and international organizations and the contracting States and contracting organizations agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory States and international organizations and the contracting States and contracting organizations otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy of it to the signatory States and international organizations and to the contracting States and contracting organizations.

#### **Article 81. Registration and publication of treaties**

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

### **PART VIII. FINAL PROVISIONS**

#### **Article 82. Signature**

The present Convention shall be open for signature until 31 December 1986 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1987, at United Nations Headquarters, New York by:

(a) all States;

(b) Namibia, represented by the United Nations Council for Namibia;

(c) international organizations invited to participate in the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations.

#### **Article 83. Ratification or act of formal confirmation**

The present Convention is subject to ratification by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by international organizations. The instruments of ratification and those relating to acts of formal confirmation shall be deposited with the Secretary-General of the United Nations.

#### **Article 84. Accession**

1. The present Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by any international organization which has the capacity to conclude treaties.

2. An instrument of accession of an international organization shall contain a declaration that it has the capacity to conclude treaties.

3. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### Article 85. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession by States or by Namibia, represented by the United Nations Council for Namibia.

2. For each State or for Namibia, represented by the United Nations Council for Namibia, ratifying or acceding to the Convention after the condition specified in paragraph 1 has been fulfilled, the Convention shall enter into force on the thirtieth day after deposit by such State or by Namibia of its instrument of ratification or accession.

3. For each international organization depositing an instrument relating to an act of formal confirmation or an instrument of accession, the Convention shall enter into force on the thirtieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1, whichever is later.

### Article 86. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized by their respective Governments, and duly authorized representatives of the United Nations Council for Namibia and of international organizations have signed the present Convention.

Done at Vienna, this twenty-first day of March one thousand nine hundred and eighty-six.

## ANNEX. ARBITRATION AND CONCILIATION PROCEDURES ESTABLISHED IN APPLICATION OF ARTICLE 66

### I. ESTABLISHMENT OF THE ARBITRAL TRIBUNAL OR CONCILIATION COMMISSION

1. A list consisting of qualified jurists, from which the parties to a dispute may choose the persons who are to constitute an arbitral tribunal or, as the case may be, a conciliation commission, shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations and every Party to the present Convention shall be invited to nominate two persons, and the names of the persons so nominated shall constitute the list, a copy of which shall be transmitted to the President of the International Court of Justice. The term of office of a person on the list, including that of any person nominated to fill a casual vacancy, shall be five years and may be renewed. A person whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraphs.

2. When notification has been made under article 66, paragraph 2, subparagraph (f), or agreement on the procedure in the present Annex has been reached under paragraph 3, the dispute shall be brought before an arbitral tribunal. When a request has been made to the Secretary-General under article 66, paragraph 4, the Secretary-General shall bring the dispute before a conciliation commission. Both the arbitral tribunal and the conciliation commission shall be constituted as follows:

The States, international organizations or, as the case may be, the States and organizations which constitute one of the parties to the dispute shall appoint by common consent:

(a) one arbitrator or, as the case may be, one conciliator, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one arbitrator or, as the case may be, one conciliator, who shall be chosen from among those included in the list and shall not be of the nationality of any of the States or nominated by any of the organizations which constitute that party to the dispute, provided that a dispute between two international organizations is not considered by nationals of one and the same State.

The States, international organizations or, as the case may be, the States and organizations which constitute the other party to the dispute shall appoint two arbitrators or, as the case may be, two conciliators, in the same way. The four persons chosen by the parties shall be appointed within sixty days following the date on which the other party to the dispute receives notification under article 66, paragraph 2, subparagraph (f), or on which the agreement on the procedure in the present Annex under paragraph 3 is reached, or on which the Secretary-General receives the request for conciliation.

The four persons so chosen shall, within sixty days following the date of the last of their own appointments, appoint from the list a fifth arbitrator or, as the case may be, conciliator, who shall be chairman.

If the appointment of the chairman, or any of the arbitrators or, as the case may be, conciliators, has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General of the United Nations within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute. If the United Nations is a party or is included in one of the parties to the dispute, the Secretary-General shall transmit the above-mentioned request to the President of the International Court of Justice, who shall perform the functions conferred upon the Secretary-General under this subparagraph.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

The appointment of arbitrators or conciliators by an international organization provided for in paragraphs 1 and 2 shall be governed by the rules of that organization.

## **II. FUNCTIONING OF THE ARBITRAL TRIBUNAL**

3. Unless the parties to the dispute otherwise agree, the Arbitral Tribunal shall decide its own procedure, assuring to each party to the dispute a full opportunity to be heard and to present its case.

4. The Arbitral Tribunal, with the consent of the parties to the dispute, may invite any interested State or international organization to submit to it its views orally or in writing.

5. Decisions of the Arbitral Tribunal shall be adopted by a majority vote of the members. In the event of an equality of votes, the vote of the Chairman shall be decisive.

6. When one of the parties to the dispute does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and to make its award. Before making its award, the Tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

7. The award of the Arbitral Tribunal shall be confined to the subject matter of the dispute and state the reasons on which it is based. Any member of the Tribunal may attach a separate or dissenting opinion to the award.

8. The award shall be final and without appeal. It shall be complied with by all parties to the dispute.

9. The Secretary-General shall provide the Tribunal with such assistance and facilities as it may require. The expenses of the Tribunal shall be borne by the United Nations.

## **III. FUNCTIONING OF THE CONCILIATION COMMISSION**

10. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

11. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

12. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

13. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

14. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

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## **6. ARTICLES ON THE EFFECTS OF ARMED CONFLICTS ON TREATIES**

General Assembly resolution 66/99 of 9 December 2011, annex

### **PART ONE. SCOPE AND DEFINITIONS**

#### **Article 1. Scope**

The present articles apply to the effects of armed conflict on the relations of States under a treaty.

#### **Article 2. Definitions**

For the purposes of the present articles:

(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, and includes treaties between States to which international organizations are also parties;

(b) "Armed conflict" means a situation in which there is resort to armed force between States or protracted resort to armed force between governmental authorities and organized armed groups.

### **PART TWO. PRINCIPLES**

#### **CHAPTER I. OPERATION OF TREATIES IN THE EVENT OF ARMED CONFLICTS**

##### **Article 3. General principle**

The existence of an armed conflict does not ipso facto terminate or suspend the operation of treaties:

- (a) As between States parties to the conflict;
- (b) As between a State party to the conflict and a State that is not.

##### **Article 4. Provisions on the operation of treaties**

Where a treaty itself contains provisions on its operation in situations of armed conflict, those provisions shall apply.

##### **Article 5. Application of rules on treaty interpretation**

The rules of international law on treaty interpretation shall be applied to establish whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict.

**Article 6. Factors indicating whether a treaty is susceptible to termination, withdrawal or suspension**

In order to ascertain whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict, regard shall be had to all relevant factors, including:

- (a) The nature of the treaty, in particular its subject matter, its object and purpose, its content and the number of parties to the treaty; and
- (b) The characteristics of the armed conflict, such as its territorial extent, its scale and intensity, its duration and, in the case of non-international armed conflict, also the degree of outside involvement.

**Article 7. Continued operation of treaties resulting from their subject matter**

An indicative list of treaties, the subject matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict, is to be found in the annex to the present articles.

**CHAPTER II. OTHER PROVISIONS RELEVANT TO THE OPERATION OF TREATIES**

**Article 8. Conclusion of treaties during armed conflict**

1. The existence of an armed conflict does not affect the capacity of a State party to that conflict to conclude treaties in accordance with international law.
2. States may conclude agreements involving termination or suspension of a treaty or part of a treaty that is operative between them during situations of armed conflict, or may agree to amend or modify the treaty.

**Article 9. Notification of intention to terminate or withdraw from a treaty or to suspend its operation**

1. A State intending to terminate or withdraw from a treaty to which it is a Party, or to suspend the operation of that treaty, as a consequence of an armed conflict shall notify the other State Party or States Parties to the treaty, or its depositary, of such intention.
2. The notification takes effect upon receipt by the other State Party or States Parties, unless it provides for a subsequent date.
3. Nothing in the preceding paragraphs shall affect the right of a Party to object within a reasonable time, in accordance with the terms of the treaty or other applicable rules of international law, to the termination of or withdrawal from the treaty, or suspension of its operation.
4. If an objection has been raised in accordance with paragraph 3, the States concerned shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.
5. Nothing in the preceding paragraphs shall affect the rights or obligations of States with regard to the settlement of disputes insofar as they have remained applicable.

**Article 10. Obligations imposed by international law independently of a treaty**

The termination of or the withdrawal from a treaty, or the suspension of its operation, as a consequence of an armed conflict, shall not impair in any way the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of that treaty.

**Article 11. Separability of treaty provisions**

Termination, withdrawal from or suspension of the operation of a treaty as a consequence of an armed conflict shall, unless the treaty otherwise provides or the Parties otherwise agree, take effect with respect to the whole treaty except where:

- (a) The treaty contains clauses that are separable from the remainder of the treaty with regard to their application;
- (b) It appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other Party or Parties to be bound by the treaty as a whole; and
- (c) Continued performance of the remainder of the treaty would not be unjust.

**Article 12. Loss of the right to terminate or withdraw from a treaty or to suspend its operation**

A State may no longer terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict if, after becoming aware of the facts:

- (a) It shall have expressly agreed that the treaty remains in force or continues in operation; or
- (b) It must by reason of its conduct be considered as having acquiesced in the continued operation of the treaty or in its maintenance in force.

**Article 13. Revival or resumption of treaty relations subsequent to an armed conflict**

1. Subsequent to an armed conflict, the States Parties may regulate, on the basis of agreement, the revival of treaties terminated or suspended as a consequence of the armed conflict.

2. The resumption of the operation of a treaty suspended as a consequence of an armed conflict shall be determined in accordance with the factors referred to in article 6.

**PART THREE. MISCELLANEOUS**

**Article 14. Effect of the exercise of the right to self-defence on a treaty**

A State exercising its inherent right of individual or collective self-defence in accordance with the Charter of the United Nations is entitled to suspend in whole or in part the operation of a treaty to which it is a Party insofar as that operation is incompatible with the exercise of that right.

**Article 15. Prohibition of benefit to an aggressor State**

A State committing aggression within the meaning of the Charter of the United Nations and resolution 3314 (XXIX) of the General Assembly of the United Nations shall not terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict that results from the act of aggression if the effect would be to the benefit of that State.

**Article 16. Decisions of the Security Council**

The present articles are without prejudice to relevant decisions taken by the Security Council in accordance with the Charter of the United Nations.

**Article 17. Rights and duties arising from the laws of neutrality**

The present articles are without prejudice to the rights and duties of States arising from the laws of neutrality.

**Article 18. Other cases of termination, withdrawal or suspension**

The present articles are without prejudice to the termination, withdrawal or suspension of treaties as a consequence of, inter alia: (a) a material breach; (b) supervening impossibility of performance; or (c) a fundamental change of circumstances.

**ANNEX. INDICATIVE LIST OF TREATIES REFERRED TO IN ARTICLE 7**

- (a) Treaties on the law of armed conflict, including treaties on international humanitarian law;
  - (b) Treaties declaring, creating or regulating a permanent regime or status or related permanent rights, including treaties establishing or modifying land and maritime boundaries;
  - (c) Multilateral law-making treaties;
  - (d) Treaties on international criminal justice;
  - (e) Treaties of friendship, commerce and navigation and agreements concerning private rights;
  - (f) Treaties for the international protection of human rights;
  - (g) Treaties relating to the international protection of the environment;
  - (h) Treaties relating to international watercourses and related installations and facilities;
  - (i) Treaties relating to aquifers and related installations and facilities;
  - (j) Treaties which are constituent instruments of international organizations;
  - (k) Treaties relating to the international settlement of disputes by peaceful means, including resort to conciliation, mediation, arbitration and judicial settlement;
  - (l) Treaties relating to diplomatic and consular relations.
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## **Chapter III**

### **SUBJECTS OF INTERNATIONAL LAW**



## States

### 7. CONVENTION ON RIGHTS AND DUTIES OF STATES

Done at Montevideo on 26 December 1933

Entry into force: 26 December 1934

League of Nations, *Treaty Series*, vol. 165, p. 19; Reg. No. 3802

The Governments represented in the Seventh International Conference of American States:  
Wishing to conclude a Convention on Rights and Duties of States, have appointed the following Plenipotentiaries:

Honduras:	Dominican Republic:
[. . .]	[. . .]
United States of America:	Haiti :
[. . .]	[. . .]
El Salvador:	Argentina:
[. . .]	[. . .]

Who, after having exhibited their full powers, which were found to be in good and due order, have agreed upon the following:

#### Article 1

The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States.

#### Article 2

The Federal State shall constitute a sole person in the eyes of international law.

#### Article 3

The political existence of the State is independent of recognition by the other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organise itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

The exercise of these rights has no other limitation than the exercise of the rights of other States according to international law.

#### Article 4

States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

#### Article 5

The fundamental rights of States are not susceptible of being affected in any manner whatsoever.

#### Article 6

The recognition of a State merely signifies that the State which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.

**Article 7**

The recognition of a State may be express or tacit. The latter results from any act which implies the intention of recognizing the new State.

**Article 8**

No State has the right to intervene in the internal or external affairs of another.

**Article 9**

The jurisdiction of States within the limits of national territory applies to all the inhabitants.

Nationals and foreigners are under the same protection of the law and the national authorities and the foreigners may not claim rights other or more extensive than those of the nationals.

**Article 10**

The primary interest of States is the conservation of peace. Differences of any nature which arise between them should be settled by recognized pacific methods.

**Article 11**

The contracting States definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a State is inviolable and may not be the object of military occupation nor of other measures of force imposed by another State directly or indirectly or for any motive whatever even temporarily.

**Article 12**

The present Convention shall not affect obligations previously entered into by the High Contracting Parties by virtue of international agreements.

**Article 13**

The present Convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The Minister of Foreign Affairs of the Republic of Uruguay shall transmit authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan-American Union in Washington, which shall notify the signatory Governments of said deposit. Such notification shall be considered as an exchange of ratifications.

**Article 14**

The present Convention will enter into force between the High Contracting Parties in the order in which they deposit their respective ratifications.

**Article 15**

The present Convention shall remain in force indefinitely but may be denounced by means of one year's notice given to the Pan-American Union, which shall transmit it to the other signatory Governments. After the expiration of this period the Convention shall cease in its effects as regards the Party which denounces but shall remain in effect for the remaining High Contracting Parties.

### Article 16

The present Convention shall be open for the adherence and accession of the States which are not signatories. The corresponding instruments shall be deposited in the archives of the Pan-American Union which shall communicate them to the other High Contracting Parties.

In witness whereof, the following Plenipotentiaries have signed this Convention in Spanish, English, Portuguese and French and hereunto affix their respective seals in the city of Montevideo, Republic of Uruguay, this 26th day of December, 1933.

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## 8. DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES

General Assembly resolution 375 (IV) of 6 December 1949, annex

*Whereas* the States of the world form a community governed by international law,

*Whereas* the progressive development of international law requires effective organization of the community of States,

*Whereas* a great majority of the States of the world have accordingly established a new international order under the Charter of the United Nations, and most of the other States of the world have declared their desire to live within this order,

*Whereas* a primary purpose of the United Nations is to maintain international peace and security, and the reign of law and justice is essential to the realization of this purpose, and

*Whereas* it is therefore desirable to formulate certain basic rights and duties of States in the light of new developments of international law and in harmony with the Charter of the United Nations,

*The General Assembly* of the United Nations adopts and proclaims this Declaration on Rights and Duties of States:

### Article 1

Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government.

### Article 2

Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

### Article 3

Every State has the duty to refrain from intervention in the internal or external affairs of any other State.

### Article 4

Every State has the duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife.

### Article 5

Every State has the right to equality in law with every other State.

**Article 6**

Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion.

**Article 7**

Every State has the duty to ensure that conditions prevailing in its territory do not menace international peace and order.

**Article 8**

Every State has the duty to settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.

**Article 9**

Every State has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another State, or in any other manner inconsistent with international law and order.

**Article 10**

Every State has the duty to refrain from giving assistance to any State which is acting in violation of article 9, or against which the United Nations is taking preventive or enforcement action.

**Article 11**

Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of article 9.

**Article 12**

Every State has the right of individual or collective self-defence against armed attack.

**Article 13**

Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

**Article 14**

Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law.

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## 9. VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS

Done at Vienna on 8 April 1983

Not yet in force

United Nations, Doc. A/CONF.117/14

*The States Parties to the present Convention,*

*Considering* the profound transformation of the international community brought about by the decolonization process,

*Considering also* that other factors may lead to cases of succession of States in the future,

*Convinced*, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of State property, archives and debts as a means for ensuring greater juridical security in international relations,

*Noting* that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

*Emphasizing* the importance of the codification and progressive development of international law which is of interest to the international community as a whole and of special importance for the strengthening of peace and international cooperation,

*Believing* that questions relating to succession of States in respect of State property, archives and debts are of special importance to all States,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Recalling* that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on Succession of States in Respect of Treaties of 1978,

*Affirming* that matters not regulated by the present Convention continue to be governed by the rules and principles of general international law,

*Have agreed* as follows:

### PART I. GENERAL PROVISIONS

#### Article 1. Scope of the present Convention

The present Convention applies to the effects of a succession of States in respect of State property, archives and debts.

#### Article 2. Use of terms

1. For the purposes of the present Convention:

(a) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(b) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(c) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(d) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(e) “newly independent State” means a successor State the territory of which, immediately before the date of the succession of States, was a dependent territory for the international relations of which the predecessor State was responsible;

(f) “third State” means any State other than the predecessor State or the successor State.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

### **Article 3. Cases of succession of States covered by the present Convention**

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

### **Article 4. Temporal application of the present Convention**

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

### **Article 5. Succession in respect of other matters**

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the effects of a succession of States in respect of matters other than those provided for in the present Convention.

### **Article 6. Rights and obligations of natural or juridical persons**

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons.

**PART II. STATE PROPERTY**

**SECTION 1. INTRODUCTION**

**Article 7. Scope of the present Part**

The articles in the present Part apply to the effects of a succession of States in respect of State property of the predecessor State.

**Article 8. State property**

For the purposes of the articles in the present Part, “State property of the predecessor State” means property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

**Article 9. Effects of the passing of State property**

The passing of State property of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State property which passes to the successor State, subject to the provisions of the articles in the present Part.

**Article 10. Date of the passing of State property**

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State property of the predecessor State is that of the succession of States.

**Article 11. Passing of State property without compensation**

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State property of the predecessor State to the successor State shall take place without compensation.

**Article 12. Absence of effect of a succession of States on the property of a third State**

A succession of States shall not as such affect property, rights and interests which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

**Article 13. Preservation and safety of State property**

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State property which passes to the successor State in accordance with those provisions.

**SECTION 2. PROVISIONS CONCERNING SPECIFIC CATEGORIES OF SUCCESSION OF STATES**

**Article 14. Transfer of part of the territory of a State**

1. When part of the territory of a State is transferred by that State to another State, the passing of State property of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State.

#### **Article 15. Newly independent State**

1. When the successor State is a newly independent State:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) immovable property, having belonged to the territory to which the succession of States relates, situated outside it and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(c) immovable State property of the predecessor State other than that mentioned in subparagraph (b) and situated outside the territory to which the succession of States relates, to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;

(d) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(e) movable property, having belonged to the territory to which the succession of States relates and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(f) movable State property of the predecessor State, other than the property mentioned in subparagraphs (d) and (e), to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory.

2. When a newly independent State is formed from two or more dependent territories, the passing of the State property of the predecessor State or States to the newly independent State shall be determined in accordance with the provisions of paragraph 1.

3. When a dependent territory becomes part of the territory of a State, other than the State which was responsible for its international relations, the passing of the State property of the predecessor State to the successor State shall be determined in accordance with the provisions of paragraph 1.

4. Agreements concluded between the predecessor State and the newly independent State to determine succession to State property of the predecessor State otherwise than by the application of paragraphs 1 to 3 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources.

#### **Article 16. Uniting of States**

When two or more States unite and so form one successor State, the State property of the predecessor States shall pass to the successor State.

#### **Article 17. Separation of part or parts of the territory of a State**

1. When part or parts of the territory of a State separate from that State and form a successor State, and unless the predecessor State and the successor State otherwise agree:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(c) movable State property of the predecessor State, other than that mentioned in subparagraph (b), shall pass to the successor State in an equitable proportion.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

3. The provisions of paragraphs 1 and 2 are without prejudice to any question of equitable compensation as between the predecessor State and the successor State that may arise as a result of a succession of States.

#### **Article 18. Dissolution of a State**

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

(a) immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated;

(b) immovable State property of the predecessor State situated outside its territory shall pass to the successor States in equitable proportions;

(c) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territories to which the succession of States relates shall pass to the successor State concerned;

(d) movable State property of the predecessor State, other than that mentioned in subparagraph (c), shall pass to the successor States in equitable proportions.

2. The provisions of paragraph 1 are without prejudice to any question of equitable compensation among the successor States that may arise as a result of a succession of States.

### **PART III. STATE ARCHIVES**

#### **SECTION 1. INTRODUCTION**

##### **Article 19. Scope of the present Part**

The articles in the present Part apply to the effects of a succession of States in respect of State archives of the predecessor State.

##### **Article 20. State archives**

For the purposes of the articles in the present Part, “State archives of the predecessor State” means all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it directly or under its control as archives for whatever purpose.

##### **Article 21. Effects of the passing of State archives**

The passing of State archives of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State archives which pass to the successor State, subject to the provisions of the articles in the present Part.

##### **Article 22. Date of the passing of State archives**

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State archives of the predecessor State is that of the succession of States.

**Article 23. Passing of State archives without compensation**

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State archives of the predecessor State to the successor State shall take place without compensation.

**Article 24. Absence of effect of a succession of States on the archives of a third State**

A succession of States shall not as such affect archives which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

**Article 25. Preservation of the integral character of groups of State archives**

Nothing in the present Part shall be considered as prejudging in any respect any question that might arise by reason of the preservation of the integral character of groups of State archives of the predecessor State.

**Article 26. Preservation and safety of State archives**

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State archives which pass to the successor State in accordance with those provisions.

**SECTION 2. PROVISIONS CONCERNING SPECIFIC CATEGORIES OF SUCCESSION OF STATES****Article 27. Transfer of part of the territory of a State**

1. When part of the territory of a State is transferred by that State to another State, the passing of State archives of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be at the disposal of the State to which the territory concerned is transferred, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.

3. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the transferred territory or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.

4. The predecessor State shall make available to the successor State, at the request and at the expense of that State, appropriate reproductions of its State archives connected with the interests of the transferred territory.

5. The successor State shall make available to the predecessor State, at the request and at the expense of that State, appropriate reproductions of State archives of the predecessor State which have passed to the successor State in accordance with paragraph 1 or 2.

**Article 28. Newly independent State**

1. When the successor State is a newly independent State:

(a) archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State;

(b) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the newly independent State;

(c) the part of State archives of the predecessor State, other than the parts mentioned in subparagraphs (a) and (b), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the newly independent State.

2. The passing or the appropriate reproduction of parts of the State archives of the predecessor State, other than those mentioned in paragraph 1, of interest to the territory to which the succession of States relates, shall be determined by agreement between the predecessor State and the newly independent State in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives of the predecessor State.

3. The predecessor State shall provide the newly independent State with the best available evidence from its State archives which bears upon title to the territory of the newly independent State or its boundaries, or which is necessary to clarify the meaning of documents of States archives of the predecessor State which pass to the newly independent State pursuant to other provisions of the present article.

4. The predecessor State shall cooperate with the successor State in efforts to recover any archives which, having belonged to the territory to which the succession of States relates, were dispersed during the period of dependence.

5. Paragraphs 1 to 4 apply when a newly independent State is formed from two or more dependent territories.

6. Paragraphs 1 to 4 apply when a dependent territory becomes part of the territory of a State other than the State which was responsible for its international relations.

7. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.

### **Article 29. Uniting of States**

When two or more States unite and so form one successor State, the State archives of the predecessor States shall pass to the successor State.

### **Article 30. Separation of part or parts of the territory of a State**

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree:

(a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory to which the succession of States relates, shall pass to the successor State.

2. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the successor State or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.

3. Agreements concluded between the predecessor State and the successor State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

4. The predecessor and successor States shall, at the request and at the expense of one of them or on an exchange basis, make available appropriate reproductions of their State archives connected with the interests of their respective territories.

5. The provisions of paragraphs 1 to 4 apply when part of the territory of a State separates from that State and unites with another State.

### **Article 31. Dissolution of a State**

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

(a) the part of the State archives of the predecessor State which should be in the territory of a successor State for normal administration of its territory shall pass to that successor State;

(b) the part of the State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory of a successor State shall pass to that successor State.

2. The State archives of the predecessor State other than those mentioned in paragraph 1 shall pass to the successor States in an equitable manner, taking into account all relevant circumstances.

3. Each successor State shall provide the other successor State or States with the best available evidence from its part of the State archives of the predecessor State which bears upon title to the territories or boundaries of that other successor State or States, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to that State or States pursuant to other provisions of the present article.

4. Agreements concluded between the successor States concerned in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

5. Each successor State shall make available to any other successor State, at the request and at the expense of that State or on an exchange basis, appropriate reproductions of its part of the State archives of the predecessor State connected with the interests of the territory of that other successor State.

## **PART IV. STATE DEBTS**

### **SECTION 1. INTRODUCTION**

#### **Article 32. Scope of the present Part**

The articles in the present Part apply to the effects of a succession of States in respect of State debts.

#### **Article 33. State debt**

For the purposes of the articles in the present Part, "State debt" means any financial obligation of a predecessor State arising in conformity with international law towards another State, an international organization or any other subject of international law.

#### **Article 34. Effects of the passing of State debts**

The passing of State debts entails the extinction of the obligations of the predecessor State and the arising of the obligations of the successor State in respect of the State debts which pass to the successor State, subject to the provisions of the articles in the present Part.

**Article 35. Date of the passing of State debts**

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State debts of the predecessor State is that of the succession of States.

**Article 36. Absence of effect of a succession of States on creditors**

A succession of States does not as such affect the rights and obligations of creditors.

**SECTION 2. PROVISIONS CONCERNING SPECIFIC CATEGORIES  
OF SUCCESSION OF STATES**

**Article 37. Transfer of part of the territory of a State**

1. When part of the territory of a State is transferred by that State to another State, the passing of the State debt of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

**Article 38. Newly independent State**

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between them provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.

2. The agreement referred to in paragraph 1 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental economic equilibria of the newly independent State.

**Article 39. Uniting of States**

When two or more States unite and so form one successor State, the State debt of the predecessor States shall pass to the successor State.

**Article 40. Separation of part or parts of the territory of a State**

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

**Article 41. Dissolution of a State**

When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account, in particular, the property, rights and interests which pass to the successor States in relation to that State debt.

**PART V. SETTLEMENT OF DISPUTES****Article 42. Consultation and negotiation**

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

**Article 43. Conciliation**

If the dispute is not resolved within six months of the date on which the request referred to in article 42 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

**Article 44. Judicial settlement and arbitration**

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 42 and 43, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

**Article 45. Settlement by common consent**

Notwithstanding articles 42, 43 and 44, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

**Article 46. Other provisions in force for the settlement of disputes**

Nothing in articles 42 to 45 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

**PART VI. FINAL PROVISIONS****Article 47. Signature**

The present Convention shall be open for signature by all States until 31 December 1983 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1984, at United Nations Headquarters in New York.

**Article 48. Ratification**

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 49. Accession**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 50. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### **Article 51. Authentic texts**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna, this eighth day of April, one thousand nine hundred and eighty-three.

#### **ANNEX**

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 43, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

## 10. ARTICLES ON NATIONALITY OF NATURAL PERSONS IN RELATION TO THE SUCCESSION OF STATES

General Assembly resolution 55/153 of 12 December 2000, annex

### Preamble

*Considering* that problems of nationality arising from succession of States concern the international community,

*Emphasizing* that nationality is essentially governed by internal law within the limits set by international law,

*Recognizing* that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals,

*Recalling* that the Universal Declaration of Human Rights of 1948 proclaimed the right of every person to a nationality,

*Recalling also* that the International Covenant on Civil and Political Rights of 1966 and the Convention on the Rights of the Child of 1989 recognize the right of every child to acquire a nationality,

*Emphasizing* that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,

*Bearing in mind* the provisions of the Convention on the reduction of statelessness of 1961, the Vienna Convention on Succession of States in Respect of Treaties of 1978 and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,

*Convinced* of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security for States and for individuals,

### PART I. GENERAL PROVISIONS

#### Article 1. Right to a nationality

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present articles.

#### Article 2. Use of terms

For the purposes of the present articles:

(a) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(b) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

- (c) “successor State” means the State which has replaced another State on the occurrence of a succession of States;
- (d) “state concerned” means the predecessor State or the successor State, as the case may be;
- (e) “third State” means any State other than the predecessor State or the successor State;
- (f) “person concerned” means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;
- (g) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

### **Article 3. Cases of succession of States covered by the present articles**

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

### **Article 4. Prevention of statelessness**

States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.

### **Article 5. Presumption of nationality**

Subject to the provisions of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession

### **Article 6. Legislation on nationality and other connected issues**

Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

### **Article 7. Effective date**

The attribution of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if persons concerned would otherwise be stateless during the period between the date of the succession of States and such attribution or acquisition of nationality.

### **Article 8. Persons concerned having their habitual residence in another State**

1. A successor State does not have the obligation to attribute its nationality to persons concerned who have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

**Article 9. Renunciation of the nationality of another State as a condition for attribution of nationality**

When a person concerned who is qualified to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

**Article 10. Loss of nationality upon the voluntary acquisition of the nationality of another State**

1. A predecessor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that person concerned who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

**Article 11. Respect for the will of persons concerned**

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.

2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.

3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.

4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.

5. States concerned should provide a reasonable time limit for the exercise of the right of option.

**Article 12. Unity of a family**

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

**Article 13. Child born after the succession of States**

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

**Article 14. Status of habitual residents**

1. The status of persons concerned as habitual residents shall not be affected by the succession of States.

2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.

**Article 15. Non-discrimination**

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground.

**Article 16. Prohibition of arbitrary decisions concerning nationality issues**

Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States.

**Article 17. Procedures relating to nationality issues**

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of States, shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

**Article 18. Exchange of information, consultation and negotiation**

1. States concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States.

2. States concerned shall, when necessary, seek a solution to eliminate or mitigate such detrimental effects by negotiation and, as appropriate, through agreement.

**Article 19. Other States**

1. Nothing in the present articles requires States to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present articles precludes States from treating persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

**PART II. PROVISIONS RELATING TO SPECIFIC CATEGORIES  
OF SUCCESSION OF STATES****SECTION 1. TRANSFER OF PART OF THE TERRITORY****Article 20. Attribution of the nationality of the successor State and  
withdrawal of the nationality of the predecessor State**

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which such persons shall be granted. The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

**SECTION 2. UNIFICATION OF STATES****Article 21. Attribution of the nationality of the successor State**

Subject to the provisions of article 8, when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

**SECTION 3. DISSOLUTION OF A STATE****Article 22. Attribution of the nationality of the successor States**

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

- (a) persons concerned having their habitual residence in its territory; and
- (b) subject to the provisions of article 8:
  - (i) persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;
  - (ii) persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

**Article 23. Granting of the right of option by the successor States**

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

**SECTION 4. SEPARATION OF PART OR PARTS OF THE TERRITORY****Article 24. Attribution of the nationality of the successor State**

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

- (a) persons concerned having their habitual residence in its territory; and
- (b) subject to the provisions of article 8:
  - (i) persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;
  - (ii) persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

**Article 25. Withdrawal of the nationality of the predecessor State**

1. The predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Unless otherwise indicated by the exercise of a right of option, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who:

- (a) have their habitual residence in its territory;
- (b) are not covered by subparagraph (a) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c) have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

**Article 26. Granting of the right of option by the predecessor  
and the successor States**

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of article 24 and paragraph 2 of article 25 who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

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## 11. UNITED NATIONS CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

Done at New York on 2 December 2004

Not yet in force

General Assembly resolution 59/38 of 2 December 2004, annex

*The States Parties to the present Convention,*

*Considering* that the jurisdictional immunities of States and their property are generally accepted as a principle of customary international law,

*Having in mind* the principles of international law embodied in the Charter of the United Nations,

*Believing* that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of practice in this area,

*Taking into account* developments in State practice with regard to the jurisdictional immunities of States and their property,

*Affirming* that the rules of customary international law continue to govern matters not regulated by the provisions of the present Convention,

*Have agreed as follows:*

### PART I. INTRODUCTION

#### Article 1. Scope of the present Convention

The present Convention applies to the immunity of a State and its property from the jurisdiction of the courts of another State.

#### Article 2. Use of terms

1. For the purposes of the present Convention:

- (a) "court" means any organ of a State, however named, entitled to exercise judicial functions;
- (b) "State" means:
  - (i) the State and its various organs of government;
  - (ii) constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that capacity;

- (iii) agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State;
- (iv) representatives of the State acting in that capacity;
- (c) “commercial transaction” means:
  - (i) any commercial contract or transaction for the sale of goods or supply of services;
  - (ii) any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;
  - (iii) any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a “commercial transaction” under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if the parties to the contract or transaction have so agreed, or if, in the practice of the State of the forum, that purpose is relevant to determining the non-commercial character of the contract or transaction.

3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

#### **Article 3. Privileges and immunities not affected by the present Convention**

1. The present Convention is without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:

- (a) its diplomatic missions, consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; and
- (b) persons connected with them.

2. The present Convention is without prejudice to privileges and immunities accorded under international law to heads of State *ratione personae*.

3. The present Convention is without prejudice to the immunities enjoyed by a State under international law with respect to aircraft or space objects owned or operated by a State.

#### **Article 4. Non-retroactivity of the present Convention**

Without prejudice to the application of any rules set forth in the present Convention to which jurisdictional immunities of States and their property are subject under international law independently of the present Convention, the present Convention shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present Convention for the States concerned.

### **PART II. GENERAL PRINCIPLES**

#### **Article 5. State immunity**

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.

#### **Article 6. Modalities for giving effect to State immunity**

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

- (a) is named as a party to that proceeding; or
- (b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.

#### **Article 7. Express consent to exercise of jurisdiction**

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:

- (a) by international agreement;
- (b) in a written contract; or
- (c) by a declaration before the court or by a written communication in a specific proceeding.

2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

#### **Article 8. Effect of participation in a proceeding before a court**

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State if it has:

- (a) itself instituted the proceeding; or
- (b) intervened in the proceeding or taken any other step relating to the merits. However, if the State satisfies the court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.

2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:

- (a) invoking immunity; or
- (b) asserting a right or interest in property at issue in the proceeding.

3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

#### **Article 9. Counterclaims**

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the principal claim.

2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the claim presented by the State.

3. A State making a counterclaim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

**PART III. PROCEEDINGS IN WHICH STATE IMMUNITY  
CANNOT BE INVOKED**

**Article 10. Commercial transactions**

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.

2. Paragraph 1 does not apply:

- (a) in the case of a commercial transaction between States; or
- (b) if the parties to the commercial transaction have expressly agreed otherwise.

3. Where a State enterprise or other entity established by a State which has an independent legal personality and is capable of:

(a) suing or being sued; and

(b) acquiring, owning or possessing and disposing of property, including property which that State has authorized it to operate or manage,

is involved in a proceeding which relates to a commercial transaction in which that entity is engaged, the immunity from jurisdiction enjoyed by that State shall not be affected.

**Article 11. Contracts of employment**

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.

2. Paragraph 1 does not apply if:

(a) the employee has been recruited to perform particular functions in the exercise of governmental authority;

(b) the employee is:

- (i) a diplomatic agent, as defined in the Vienna Convention on Diplomatic Relations of 1961;
- (ii) a consular officer, as defined in the Vienna Convention on Consular Relations of 1963;
- (iii) a member of the diplomatic staff of a permanent mission to an international organization or of a special mission, or is recruited to represent a State at an international conference; or
- (iv) any other person enjoying diplomatic immunity;

(c) the subject-matter of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;

(d) the subject-matter of the proceeding is the dismissal or termination of employment of an individual and, as determined by the head of State, the head of Government or the Minister for Foreign Affairs of the employer State, such a proceeding would interfere with the security interests of that State;

(e) the employee is a national of the employer State at the time when the proceeding is instituted, unless this person has the permanent residence in the State of the forum; or

(f) the employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

**Article 12. Personal injuries and damage to property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

**Article 13. Ownership, possession and use of property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

- (a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;
- (b) any right or interest of the State in movable or immovable property arising by way of succession, gift or *bona vacantia*; or
- (c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.

**Article 14. Intellectual and industrial property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

- (a) the determination of any right of the State in a patent, industrial design, trade name or business name, trademark, copyright or any other form of intellectual or industrial property which enjoys a measure of legal protection, even if provisional, in the State of the forum; or
- (b) an alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum.

**Article 15. Participation in companies or other collective bodies**

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:

- (a) has participants other than States or international organizations; and
- (b) is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.

2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

**Article 16. Ships owned or operated by a State**

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

2. Paragraph 1 does not apply to warships, or naval auxiliaries, nor does it apply to other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.

3. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the carriage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

4. Paragraph 3 does not apply to any cargo carried on board the ships referred to in paragraph 2, nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.

5. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.

6. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

#### **Article 17. Effect of an arbitration agreement**

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

- (a) the validity, interpretation or application of the arbitration agreement;
- (b) the arbitration procedure; or
- (c) the confirmation or the setting aside of the award, unless the arbitration agreement otherwise provides.

### **PART IV. STATE IMMUNITY FROM MEASURES OF CONSTRAINT IN CONNECTION WITH PROCEEDINGS BEFORE A COURT**

#### **Article 18. State immunity from pre-judgment measures of constraint**

No pre-judgment measures of constraint, such as attachment or arrest, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

- (a) the State has expressly consented to the taking of such measures as indicated:
  - (i) by international agreement;
  - (ii) by an arbitration agreement or in a written contract; or
  - (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or
- (b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.

#### **Article 19. State immunity from post-judgment measures of constraint**

No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

- (a) the State has expressly consented to the taking of such measures as indicated:
  - (i) by international agreement;

- (ii) by an arbitration agreement or in a written contract; or
  - (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or
- (b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or
- (c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.

#### **Article 20. Effect of consent to jurisdiction to measures of constraint**

Where consent to the measures of constraint is required under articles 18 and 19, consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint.

#### **Article 21. Specific categories of property**

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph (c):

- (a) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;
- (b) property of a military character or used or intended for use in the performance of military functions;
- (c) property of the central bank or other monetary authority of the State;
- (d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;
- (e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

2. Paragraph 1 is without prejudice to article 18 and article 19, subparagraphs (a) and (b).

### **PART V. MISCELLANEOUS PROVISIONS**

#### **Article 22. Service of process**

1. Service of process by writ or other document instituting a proceeding against a State shall be effected:

- (a) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or
- (b) in accordance with any special arrangement for service between the claimant and the State concerned, if not precluded by the law of the State of the forum; or
- (c) in the absence of such a convention or special arrangement:
  - (i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or
  - (ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

2. Service of process referred to in paragraph 1 (c) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.

#### **Article 23. Default judgment**

1. A default judgment shall not be rendered against a State unless the court has found that:

- (a) the requirements laid down in article 22, paragraphs 1 and 3, have been complied with;
- (b) a period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with article 22, paragraphs 1 and 2; and
- (c) the present Convention does not preclude it from exercising jurisdiction.

2. A copy of any default judgment rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in article 22, paragraph 1, and in accordance with the provisions of that paragraph.

3. The time-limit for applying to have a default judgment set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgment is received or is deemed to have been received by the State concerned.

#### **Article 24. Privileges and immunities during court proceedings**

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.

2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a respondent party before a court of another State.

### **PART VI. FINAL CLAUSES**

#### **Article 25. Annex**

The annex to the present Convention forms an integral part of the Convention.

#### **Article 26. Other international agreements**

Nothing in the present Convention shall affect the rights and obligations of States Parties under existing international agreements which relate to matters dealt with in the present Convention as between the parties to those agreements.

#### **Article 27. Settlement of disputes**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of any of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the

arbitration, any of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of, or accession to, the present Convention, declare that it does not consider itself bound by paragraph 2. The other States Parties shall not be bound by paragraph 2 with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

#### **Article 28. Signature**

The present Convention shall be open for signature by all States until 17 January 2007, at United Nations Headquarters, New York.

#### **Article 29. Ratification, acceptance, approval or accession**

1. The present Convention shall be subject to ratification, acceptance or approval.

2. The present Convention shall remain open for accession by any State.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 30. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article 31. Denunciation**

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The present Convention shall, however, continue to apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the date on which the denunciation takes effect for any of the States concerned.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in the present Convention to which it would be subject under international law independently of the present Convention.

#### **Article 32. Depositary and notifications**

1. The Secretary-General of the United Nations is designated the depositary of the present Convention.

2. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States of the following:

(a) signatures of the present Convention and the deposit of instruments of ratification, acceptance, approval or accession or notifications of denunciation, in accordance with articles 29 and 31;

- (b) the date on which the present Convention will enter into force, in accordance with article 30;
- (c) any acts, notifications or communications relating to the present Convention.

### **Article 33. Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention opened for signature at United Nations Headquarters in New York on 17 January 2005.

## **ANNEX TO THE CONVENTION**

### **UNDERSTANDINGS WITH RESPECT TO CERTAIN PROVISIONS OF THE CONVENTION**

The present annex is for the purpose of setting out understandings relating to the provisions concerned.

#### **With respect to article 10**

The term “immunity” in article 10 is to be understood in the context of the present Convention as a whole.

Article 10, paragraph 3, does not prejudice the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

#### **With respect to article 11**

The reference in article 11, paragraph 2 (*d*), to the “security interests” of the employer State is intended primarily to address matters of national security and the security of diplomatic missions and consular posts.

Under article 41 of the 1961 Vienna Convention on Diplomatic Relations and article 55 of the 1963 Vienna Convention on Consular Relations, all persons referred to in those articles have the duty to respect the laws and regulations, including labour laws, of the host country. At the same time, under article 38 of the 1961 Vienna Convention on Diplomatic Relations and article 71 of the 1963 Vienna Convention on Consular Relations, the receiving State has a duty to exercise its jurisdiction in such a manner as not to interfere unduly with the performance of the functions of the mission or the consular post.

#### **With respect to articles 13 and 14**

The expression “determination” is used to refer not only to the ascertainment or verification of the existence of the rights protected, but also to the evaluation or assessment of the substance, including content, scope and extent, of such rights.

#### **With respect to article 17**

The expression “commercial transaction” includes investment matters.

#### **With respect to article 19**

The expression “entity” in subparagraph (*c*) means the State as an independent legal personality, a constituent unit of a federal State, a subdivision of a State, an agency or instrumentality of a State or other entity, which enjoys independent legal personality.

The words “property that has a connection with the entity” in subparagraph (*c*) are to be understood as broader than ownership or possession.

Article 19 does not prejudice the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

## International organizations

### 12. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Done at New York on 13 February 1946

Entry into force: 17 September 1946

United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1); Reg. No. 4

*Whereas* Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

*Whereas* Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

*Consequently* the General Assembly by a Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.

#### Article I. Juridical personality

Section 1. The United Nations shall possess juridical personality. It shall have the capacity:

- (a) To contract;
- (b) To acquire and dispose of immovable and movable property;
- (c) To institute legal proceedings.

#### Article II. Property, funds and assets

Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in 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.

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

Section 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Section 5. Without being restricted by financial controls, regulations or moratoria of any kind,

(a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7. The United Nations, its assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

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

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

Section 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

### **Article III. Facilities in respect of communications**

Section 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

### **Article IV. The representatives of Members**

Section 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) Inviolability for all papers and documents;

(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;

(e) The same facilities in respect of currency or 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 diplomatic envoys, and also;

(g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

Section 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15. The provisions of Sections 11, 12 and 13 are not applicable as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

Section 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

#### Article V. Officials

Section 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18. Officials of the United Nations shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) Be immune from national service obligations;
- (d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 20. Privileges and immunities are granted to officials 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 official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall co-operate at all times with the appropriate authorities of Members 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 in this Article.

#### Article VI. Experts on missions for the United Nations

Section 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) Inviolability for all papers and documents;
- (d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

#### Article VII. United Nations *laissez-passer*

Section 24. The United Nations may issue United Nations *laissez-passer* to its officials. These *laissez-passer* shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of Section 25.

Section 25. Applications for visas (where required) from the holders of United Nations *laissez-passer*, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26. Similar facilities to those specified in Section 25 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 on the business of the United Nations.

Section 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations *laissez-passer* on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

#### **Article VIII. Settlements of disputes**

Section 29. The United Nations shall make provisions for appropriate modes of settlement of:

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

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

Section 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

#### **Final article**

Section 31. This convention is submitted to every Member of the United Nations for accession.

Section 32. Accession shall be affected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

Section 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

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### 13. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES

Done at New York on 21 November 1947

Entry into force: 2 December 1948

United Nations, *Treaty Series*, vol. 33, p. 261; Reg. No. 521

Whereas the General Assembly of the United Nations adopted on 13 February 1946 a resolution contemplating the unification as far as possible of the privileges and immunities enjoyed by the United Nations and by the various specialized agencies; and

Whereas consultations concerning the implementation of the aforesaid resolution have taken place between the United Nations and the specialized agencies;

Consequently, by resolution 179(II) adopted on 21 November 1947, the General Assembly has approved the following Convention, which is submitted to the specialized agencies for acceptance and to every Member of the United Nations and to every other State member of one or more of the specialized agencies for accession.

#### Article I. Definitions and scope

##### Section 1

In this Convention:

- (i) The words "standard clauses" refer to the provisions of articles II to IX.
- (ii) The words "specialized agencies" mean:
  - (a) The International Labour Organisation;
  - (b) The Food and Agriculture Organization of the United Nations;
  - (c) The United Nations Educational, Scientific and Cultural Organization;
  - (d) The International Civil Aviation Organization;
  - (e) The International Monetary Fund;
  - (f) The International Bank for Reconstruction and Development;
  - (g) The World Health Organization;
  - (h) The Universal Postal Union;
  - (i) The International Telecommunications Union; and
  - (j) Any other agency in relationship with the United Nations in accordance with Articles 57 and 63 of the Charter.

(iii) The word "Convention" means, in relation to any particular specialized agency, the standard clauses as modified by the final (or revised) text of the annex transmitted by that agency in accordance with sections 36 and 38.

(iv) For the purposes of article III, the words "property and assets" shall also include property and funds administered by a specialized agency in furtherance of its constitutional functions.

(v) For the purposes of articles V and VII, the expression "representatives of members" shall be deemed to include all representatives; alternates, advisers, technical experts and secretaries of delegations.

(vi) In sections 13, 14, 15 and 25, the expression "meetings convened by a specialized agency" means meetings: (1) of its assembly and of its executive body (however designated), and (2) of any commission provided for in its constitution; (3) of any international conference convened by it; and (4) of any committee of any of these bodies.

(vii) The term "executive head" means the *principal executive official* of the specialized agency in question, whether designated "Director-General" or otherwise.

*Section 2*

Each State party to this Convention in respect of any specialized agency to which this Convention has become applicable in accordance with section 37 shall accord to, or in connexion 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 sections 36 or 38.

**Article II. Juridical personality***Section 3*

The specialized agencies shall possess juridical personality. They shall have the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property, (c) to institute legal proceedings.

**Article III. Property, funds and assets***Section 4*

The specialized agencies, their 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 they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

*Section 5*

The premises of the specialized agencies shall be inviolable. The property and assets of the specialized agencies, 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.

*Section 6*

The archives of the specialized agencies, and in general all documents belonging to them or held by them, shall be inviolable, wherever located.

*Section 7*

Without being restricted by financial controls, regulations or moratoria of any kind:

(a) The specialized agencies may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) The specialized agencies may freely transfer their funds, gold or currency from one country to another or within any country and convert any currency held by them into any other currency.

*Section 8*

Each specialized agency shall, in exercising its rights under section 7 above, pay due regard to any representations made by the Government of any State party to this Convention in so far as it is considered that effect can be given to such representations without detriment to the interests of the agency.

*Section 9*

The specialized agencies, their assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the specialized agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialized agencies for their official use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country;

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

*Section 10*

While the specialized agencies 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 specialized agencies are making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, States parties to this Convention will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

**Article IV. Facilities in respect of communications**

*Section 11*

Each specialized agency shall enjoy, in the territory of each State party to this Convention in respect of that agency, for its official communications, treatment not less favourable than that accorded by the Government of such State 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 communications, and press rates for information to the press and radio.

*Section 12*

No censorship shall be applied to the official correspondence and other official communications of the specialized agencies.

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

Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency.

**Article V. Representatives of members**

*Section 13*

Representatives of members at meetings convened by a specialized agency shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;

(b) Inviolability for all papers and documents;

(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State which they are visiting or through which they are passing in the exercise of their functions;

(e) The same facilities in respect of currency or 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.

*Section 14*

In order to secure for the representatives of members of the specialized agencies at meeting convened by them complete freedom of speech and complete independence in the discharge of their

duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

*Section 15*

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of members of the specialized agencies at meetings convened by them are present in a member State for the discharge of their duties shall not be considered as periods of residence.

*Section 16*

Privileges and immunities are accorded to the representatives of members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the specialized agencies. Consequently, a member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the member, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

*Section 17*

The provisions of sections 13, 14 and 15 are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative.

## **Article VI. Officials**

*Section 18*

Each specialized agency will specify the categories of officials to which the provisions of this article and of article VIII shall apply. It shall communicate them to the Governments of all States parties to this Convention in respect of that agency and to the Secretary-General of the United Nations. The names of the officials included in these categories shall from time to time be made known to the above-mentioned Governments.

*Section 19*

Officials of the specialized agencies shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations;
- (c) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (d) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;
- (e) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;
- (f) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

*Section 20*

The officials of the specialized agencies shall be exempt from national service obligations, provided that, in relation to the States of which they are nationals, such exemption shall be confined to officials of the specialized agencies whose names have, by reason of their duties, been placed upon a list compiled by the executive head of the specialized agency and approved by the State concerned.

Should other officials of specialized agencies be called up for national service, the State concerned shall, at the request of the specialized agency concerned, grant such temporary deferments

in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

#### *Section 21*

In addition to the immunities and privileges specified in sections 19 and 20, the executive head of each specialized agency, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

#### *Section 22*

Privileges and immunities are granted to officials in the interests of the specialized agencies only and not for the personal benefit of the individuals themselves. Each specialized agency shall have the right and the duty to waive the immunity of any official 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 specialized agency.

#### *Section 23*

Each specialized agency shall co-operate at all times with the appropriate authorities of member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connexion with the privileges, immunities and facilities mentioned in this article.

### **Article VII. Abuses of privilege**

#### *Section 24*

If any State party to this Convention considers that there has been an abuse of a privilege or immunity conferred by this Convention, consultations shall be held between that State and the specialized agency concerned 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 State and the specialized agency concerned, the question whether an abuse of a privilege or immunity has occurred shall be submitted to the International Court of Justice in accordance with section 32. If the International Court of Justice finds that such an abuse has occurred, the State party to this Convention affected by such abuse shall have the right, after notification to the specialized agency in question, to withhold from the specialized agency concerned the benefits of the privilege or immunity so abused.

#### *Section 25*

1. Representatives of members at meetings convened by specialized agencies, while exercising their functions and during their journeys to and from the place of meeting, and officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country provided that:

2. (I) Representatives of members, or persons who are entitled to diplomatic immunity under section 21, shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to that country.

(II) In the case of an official to whom section 21 is not applicable, no order to leave the country shall be issued other than with the approval of the Foreign Minister of the country in question, and such approval shall be given only after consultation with the executive head of the specialized agency concerned; and, if expulsion proceedings are taken against an official, the executive head of the specialized agency shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

### Article VIII. *Laissez-passer*

#### Section 26

Officials of the specialized agencies shall be entitled to use the United Nations *laissez-passer* in conformity with administrative arrangements to be concluded between the Secretary-General of the United Nations and the competent authorities of the specialized agencies, to which agencies special powers to issue *laissez-passer* may be delegated. The Secretary General of the United Nations shall notify each State party to this Convention of each administrative arrangements so concluded

#### Section 27

States parties to this Convention shall recognize and accept the United Nations *laissez-passer* issued to officials of the specialized agencies as valid travel documents.

#### Section 28

Applications for visas, where required, from officials of specialized agencies holding United Nations *laissez-passer*, when accompanied by a certificate that they are travelling on the business of a specialized agency, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

#### Section 29

Similar facilities to those specified in section 28, 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 on the business of a specialized agency.

#### Section 30

The executive heads, assistant executive heads, heads of departments and other officials of a rank not lower than head of department of the specialized agencies, travelling on United Nations *laissez-passer* on the business of the specialized agencies, shall be granted the same facilities for travel as are accorded to officials of comparable rank in diplomatic missions.

### Article IX. Settlement of disputes

#### Section 31

Each specialized agency shall make provision for appropriate modes of settlement of:

(a) Disputes arising out of contracts or other disputes of private character to which the specialized agency is a party;

(b) Disputes involving any official of a specialized agency who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of section 22.

#### Section 32

All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between one of the specialized agencies on the one hand, and a member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court and the relevant provisions of the agreements concluded between the United Nations and the specialized agency concerned. The opinion given by the Court shall be accepted as decisive by the parties.

### Article X. Annexes and application to individual specialized agencies

#### Section 33

In their application to each specialized agency, the standard clauses shall operate subject to any modifications set forth in the final (or revised) text of the annex relating to that agency, as provided in sections 36 and 38.

*Section 34*

The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument.

*Section 35*

Draft annexes 1 to 9 are recommended to the specialized agencies named therein. In the case of any specialized agency not mentioned by name in section 1, the Secretary-General of the United Nations shall transmit to the agency a draft annex recommended by the Economic and Social Council.

*Section 36*

The final text of each annex shall be that approved by the specialized agency in question in accordance with its constitutional procedure. A copy of the annex as approved by each specialized agency shall be transmitted by the agency in question to the Secretary-General of the United Nations and shall thereupon replace the draft referred to in section 35.

*Section 37*

The present Convention becomes applicable to each specialized agency when it has transmitted to the Secretary-General of the United Nations the final text of the relevant annex and has informed him that it accepts the standard clauses, as modified by this annex, and undertakes to give effect to sections 8, 18, 22, 23, 24, 31, 32, 42 and 45 (subject to any modification of section 32 which may be found necessary in order to make the final text of the annex consonant with the constitutional instrument of the agency) and any provisions of the annex placing obligations on the agency. The Secretary-General shall communicate to all Members of the United Nations and to other States members of the specialized agencies certified copies of all annexes transmitted to him under this section and of revised annexes transmitted under section 38.

*Section 38*

If, after the transmission of a final annex under section 36, any specialized agency approves any amendments thereto in accordance with its constitutional procedure, a revised annex shall be transmitted by it to the Secretary-General of the United Nations.

*Section 39*

The provisions of this Convention shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded by any State to any specialized agency by reason of the location in the territory of that State of its headquarters or regional offices. This Convention shall not be deemed to prevent the conclusion between any State party thereto and any specialized agency of supplemental agreements adjusting the provisions of this Convention or extending or curtailing the privileges and immunities thereby granted.

*Section 40*

It is understood that the standard clauses, as modified by the final text of an annex sent by a specialized agency to the Secretary-General of the United Nations under section 36 (or any revised annex sent under section 38), will be consistent with the provisions of the constitutional instrument then in force of the agency in question, and that if any amendment to that instrument is necessary for the purpose of making the constitutional instrument so consistent, such amendment will have been brought into force in accordance with the constitutional procedure of that agency before the final (or revised) annex is transmitted.

The Convention shall not itself operate so as to abrogate, or derogate from, any provisions of the constitutional instrument of any specialized agency or any rights or obligations which the agency may otherwise have, acquire, or assume.

**Article XI. Final provisions***Section 41*

Accession to this Convention by a Member of the United Nations and (subject to section 42) by any State member of a specialized agency shall be effected by deposit with the Secretary-General of the United Nations of an instrument of accession which shall take effect on the date of its deposit.

*Section 42*

Each specialized agency concerned shall communicate the text of this Convention together with the relevant annexes to those of its members which are not Members of the United Nations and shall invite them to accede thereto in respect of that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-General of the United Nations or with the executive head of the specialized agency.

*Section 43*

Each State party to this Convention shall indicate in its instrument of accession the specialized agency or agencies in respect of which it undertakes to apply the provisions of this Convention. Each State party to this Convention may by a subsequent written notification to the Secretary-General of the United Nations undertake to apply the provisions of this Convention to one or more further specialized agencies. This notification shall take effect on the date of its receipt by the Secretary-General.

*Section 44*

This Convention shall enter into force for each State party to this Convention in respect of a specialized agency when it has become applicable to that agency in accordance with section 37 and the State party has undertaken to apply the provisions of the Convention to that agency in accordance with section 43.

*Section 45*

The Secretary-General of the United Nations shall inform all Members of the United Nations, as well as all members of the specialized agencies, and executive heads of the specialized agencies, of the deposit of each instrument of accession received under section 41 and of subsequent notifications received under section 43. The executive head of a specialized agency shall inform the Secretary-General of the United Nations and the members of the agency concerned of the deposit of any instrument of accession deposited with him under section 42.

*Section 46*

It is understood that, when an instrument of accession or a subsequent notification is deposited on behalf of any State, this State will be in a position under its own law to give effect to the terms of this Convention, as modified by the final texts of any annexes relating to the agencies covered by such accessions or notifications.

*Section 47*

1. Subject to the provisions of paragraphs 2 and 3 of this section, each State party to this Convention undertakes to apply this Convention in respect of each specialized agency covered by its accession or subsequent notification, until such time as a revised convention or annex shall have become applicable to that agency and the said State shall have accepted the revised convention or annex. In the case of a revised annex, the acceptance of States shall be by a notification addressed to the Secretary-General of the United Nations, which shall take effect on the date of its receipt by the Secretary-General.

2. Each State party to this Convention, however, which is not, or has ceased to be, a member of a specialized agency, may address a written notification to the Secretary-General of the United Nations and the executive head of the agency concerned to the effect that it intends to withhold from that agency the benefits of this Convention as from a specified date, which shall not be earlier than three months from the date of receipt of the notification.

3. Each State party to this Convention may withhold the benefit of this Convention from any specialized agency which ceases to be in relationship with the United Nations.

4. The Secretary-General of the United Nations shall inform all members States parties to this Convention of any notification transmitted to him under the provisions of this section.

*Section 48*

At the request of one-third of the States parties to this Convention, the Secretary-General of the United Nations will convene a conference with a view to its revision.

*Section 49*

The Secretary-General of the United Nations shall transmit copies of this Convention to each specialized agency and to the Government of each Member of the United Nations.

**ANNEXES**

[For the list of specialized agencies to which the Convention is applicable and for the text of their relevant annexes, see United Nations Treaty Collection, *Multilateral Treaties Deposited with the Secretary-General*, chapter III-2 (<http://treaties.un.org>).]

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## **Chapter IV**

### **DIPLOMATIC AND CONSULAR RELATIONS**



## 14. VIENNA CONVENTION ON DIPLOMATIC RELATIONS

Done at Vienna on 18 April 1961

Entry into force: 24 April 1964

United Nations, *Treaty Series*, vol. 500, p. 95; Reg. No. 7310

*The States Parties to the present Convention,*

*Recalling* that peoples of all nations from ancient times have recognized the status of diplomatic agents,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

*Believing* that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

*Realizing* 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,

*Affirming* that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

*Have agreed* as follows:

### Article 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

(a) the “head of the mission” is the person charged by the sending State with the duty of acting in that capacity;

(b) the “members of the mission” are the head of the mission and the members of the staff of the mission;

(c) the “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(d) the “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;

(e) a “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;

(f) the “members of the administrative and technical staff” are the members of the staff of the mission employed in the administrative and technical service of the mission;

(g) the “members of the service staff” are the members of the staff of the mission in the domestic service of the mission;

(h) a “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(i) the “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

### Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

**Article 3**

1. The functions of a diplomatic mission consist, *inter alia*, in:
  - (a) representing the sending State in the receiving State;
  - (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
  - (c) negotiating with the Government of the receiving State;
  - (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
  - (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.
2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

**Article 4**

1. The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.
2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

**Article 5**

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.
2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a *chargé d'affaires ad interim* in each State where the head of mission has not his permanent seat.
3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

**Article 6**

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

**Article 7**

Subject to the provisions of articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

**Article 8**

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.
2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

### Article 9

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission.

### Article 10

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

(a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;

(b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;

(c) the arrival and final departure of private servants in the employ of persons referred to in subparagraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;

(d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

### Article 11

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

### Article 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

### Article 13

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

**Article 14**

1. Heads of mission are divided into three classes, namely:
  - (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
  - (b) that of envoys, ministers and internuncios accredited to Heads of State;
  - (c) that of chargés d'affaires accredited to Ministers for Foreign Affairs.
2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

**Article 15**

The class to which the heads of their missions are to be assigned shall be agreed between States.

**Article 16**

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with article 13.
2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.
3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

**Article 17**

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

**Article 18**

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

**Article 19**

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions a chargé d'affaires ad interim shall act provisionally as head of the mission. The name of the chargé d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.
2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

**Article 20**

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

**Article 21**

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

#### **Article 22**

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

#### **Article 23**

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

#### **Article 24**

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

#### **Article 25**

The receiving State shall accord full facilities for the performance of the functions of the mission.

#### **Article 26**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

#### **Article 27**

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

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.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

#### **Article 28**

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

#### **Article 29**

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

#### **Article 30**

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.

#### **Article 31**

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

#### **Article 32**

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

### **Article 33**

1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

(a) that they are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

### **Article 34**

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 39;

(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23.

### **Article 35**

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

**Article 36**

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the mission;
- (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

**Article 37**

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

**Article 38**

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

**Article 39**

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its terri-

tory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. 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 in 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.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

#### Article 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit, the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

#### Article 41

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

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

**Article 42**

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

**Article 43**

The function of a diplomatic agent comes to an end, *inter alia*:

(a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;

(b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 9, it refuses to recognize the diplomatic agent as a member of the mission.

**Article 44**

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

**Article 45**

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

(a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

(b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

**Article 46**

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

**Article 47**

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

**Article 48**

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

**Article 49**

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 50**

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 51**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article 52**

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 48:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 48, 49 and 50;

(b) of the date on which the present Convention will enter into force, in accordance with article 51.

**Article 53**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 48.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

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**14.(a) OPTIONAL PROTOCOL TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS CONCERNING ACQUISITION OF NATIONALITY**

Done at Vienna on 18 April 1961

Entry into force: 24 April 1964

United Nations, *Treaty Series*, vol. 500, p. 223; Reg. No. 7311

*The States Parties to the present Protocol and to the Vienna Convention on Diplomatic Relations*, hereinafter referred to as "the Convention," adopted by the United Nations Conference held at Vienna from 2 March to 14 April 1961,

*Expressing their wish* to establish rules between them concerning acquisition of nationality by the members of their diplomatic missions and of the families forming part of the household of those members,

*Have agreed* as follows:

#### **Article I**

For the purpose of the present Protocol, the expression "members of the mission" shall have the meaning assigned to it in article 1, subparagraph (b), of the Convention, namely "the head of the mission and the members of the staff of the mission."

#### **Article II**

Members of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

#### **Article III**

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

#### **Article IV**

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article V**

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article VI**

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### **Article VII**

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles III, IV and V;

(b) of the date on which the present Protocol will enter into force, in accordance with article VI.

#### **Article VIII**

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article III.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

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## **14.(b) OPTIONAL PROTOCOL TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES**

Done at Vienna on 18 April 1961

Entry into force: 24 April 1964

United Nations, *Treaty Series*, vol. 500, p. 241; Reg. No. 7312

*The States Parties to the present Protocol and to the Vienna Convention on Diplomatic Relations*, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 2 March to 14 April 1961,

*Expressing their wish* to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

*Have agreed* as follows:

### **Article I**

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

### **Article II**

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

### **Article III**

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

### **Article IV**

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

### **Article V**

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

### **Article VI**

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article VII**

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article VIII**

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever day is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article IX**

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

- (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles V, VI and VII;
- (b) of declarations made in accordance with article IV of the present Protocol;
- (c) of the date on which the present Protocol will enter into force, in accordance with article VIII.

**Article X**

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

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## 15. VIENNA CONVENTION ON CONSULAR RELATIONS

Done at Vienna on 24 April 1963

Entry into force: 19 March 1967

United Nations, *Treaty Series*, vol. 596, p. 261; Reg. No. 8638

*The States Parties to the present Convention,*

*Recalling* that consular relations have been established between peoples since ancient times,

*Having in mind* the Purposes and Principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

*Considering* that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on 18 April 1961,

*Believing* that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,

*Affirming* that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

*Have agreed* as follows:

### Article 1. Definitions

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;
- (b) “consular district” means the area assigned to a consular post for the exercise of consular functions;
- (c) “head of consular post” means the person charged with the duty of acting in that capacity;
- (d) “consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (e) “consular employee” means any person employed in the administrative or technical service of a consular post;
- (f) “member of the service staff” means any person employed in the domestic service of a consular post;
- (g) “members of the consular post” means consular officers, consular employees and members of the service staff;
- (h) “members of the consular staff” means consular officers, other than the head of a consular post, consular employees and members of the service staff;
- (i) “member of the private staff” means a person who is employed exclusively in the private service of a member of the consular post;
- (j) “consular premises” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
- (k) “consular archives” includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safe keeping.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers, the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by article 71 of the present Convention.

## CHAPTER I. CONSULAR RELATIONS IN GENERAL

### SECTION I. ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS

#### Article 2. Establishment of consular relations

1. The establishment of consular relations between States takes place by mutual consent.
2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.
3. The severance of diplomatic relations shall not *ipso facto* involve the severance of consular relations.

### Article 3. Exercise of consular functions

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

### Article 4. Establishment of a consular post

1. A consular post may be established in the territory of the receiving State only with that State's consent.

2. The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.

3. Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.

4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.

5. The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof.

### Article 5. Consular functions

Consular functions consist in:

(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

(b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;

(c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

(d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

(f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;

(g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending States in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;

(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agree-

ments in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

#### **Article 6. Exercise of consular functions outside the consular district**

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

#### **Article 7. Exercise of consular functions in a third State**

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

#### **Article 8. Exercise of consular functions on behalf of a third State**

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

#### **Article 9. Classes of heads of consular posts**

1. Heads of consular posts are divided into four classes, namely

- (a) consuls-general;
- (b) consuls;
- (c) vice-consuls;
- (d) consular agents.

2. Paragraph 1 of this article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

#### **Article 10. Appointment and admission of heads of consular posts**

1. Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.

2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

**Article 11. The consular commission or notification of appointment**

1. The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.

2. The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3. If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this article.

**Article 12. The *exequatur***

1. The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an *exequatur*, whatever the form of this authorization.

2. A State which refused to grant an *exequatur* is not obliged to give to the sending State reasons for such refusal.

3. Subject to the provisions of articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an *exequatur*.

**Article 13. Provisional admission of heads of consular posts**

Pending delivery of the *exequatur*, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

**Article 14. Notification to the authorities of the consular district**

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

**Article 15. Temporary exercise of the functions of the head of a consular post**

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

#### **Article 16. Precedence as between heads of consular posts**

1. Heads of consular posts shall rank in each class according to the date of the grant of the *exequatur*.

2. If, however, the head of a consular post before obtaining the *exequatur* is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the *exequatur*.

3. The order of precedence as between two or more heads of consular posts who obtained the *exequatur* or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of article 11 were presented to the receiving State.

4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of article 15.

5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.

6. Heads of consular posts shall have precedence over consular officers not having that status.

#### **Article 17. Performance of diplomatic acts by consular officers**

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any intergovernmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

#### **Article 18. Appointment of the same person by two or more States as a consular officer**

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

#### **Article 19. Appointment of members of consular staff**

1. Subject to the provisions of articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.

2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of article 23.

3. The sending State may, if required by its laws and regulations, request the receiving State to grant an *exequatur* to a consular officer other than the head of a consular post.

4. The receiving State may, if required by its laws and regulations, grant an *exequatur* to a consular officer other than the head of a consular post.

#### **Article 20. Size of the consular staff**

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

#### **Article 21. Precedence as between consular officers of a consular post**

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

#### **Article 22. Nationality of consular officers**

1. Consular officers should, in principle, have the nationality of the sending State.
2. Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

#### **Article 23. Persons declared “*non grata*”**

1. The receiving State may at any time notify the sending State that a consular officer is *persona non grata* or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.
2. If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this article, the receiving State may, as the case may be, either withdraw the *exequatur* from the person concerned or cease to consider him as a member of the consular staff.
3. A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.
4. In the cases mentioned in paragraphs 1 and 3 of this article, the receiving State is not obliged to give to the sending State reasons for its decision.

#### **Article 24. Notification to the receiving State of appointments, arrivals and departures**

1. The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:

- (a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;
- (b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;
- (c) the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;

(d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

2. When possible, prior notification of arrival and final departure shall also be given.

## **SECTION II. END OF CONSULAR FUNCTIONS**

### **Article 25. Termination of the functions of a member of a consular post**

The functions of a member of a consular post shall come to an end, *inter alia*:

(a) on notification by the sending State to the receiving State that his functions have come to an end;

(b) on withdrawal of the *exequatur*;

(c) on notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

### **Article 26. Departure from the territory of the receiving State**

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

### **Article 27. Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances**

1. In the event of the severance of consular relations between two States:

(a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;

(b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

2. In the event of the temporary or permanent closure of a consular post, the provisions of subparagraph (a) of paragraph 1 of this article shall apply. In addition,

(a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or

(b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of subparagraphs (b) and (c) of paragraph 1 of this article shall apply.

## **CHAPTER II. FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST**

### **SECTION I. FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST**

#### **Article 28. Facilities for the work of the consular post**

The receiving State shall accord full facilities for the performance of the functions of the consular post.

**Article 29. Use of national flag and coat-of-arms**

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this article.
2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.
3. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the receiving State.

**Article 30. Accommodation**

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

**Article 31. Inviolability of the consular premises**

1. Consular premises shall be inviolable to the extent provided in this article.
2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.
3. Subject to the provisions of paragraph 2 of this article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.
4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

**Article 32. Exemption from taxation of consular premises**

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to paragraph 1 of this article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

**Article 33. Inviolability of the consular archives and documents**

The consular archives and documents shall be inviolable at all times and wherever they may be.

**Article 34. Freedom of movement**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

**Article 35. Freedom of communication**

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

**Article 36. Communication and contact with nationals of the sending State**

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers

shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

#### **Article 37. Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents**

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;

(c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

#### **Article 38. Communication with the authorities of the receiving State**

In the exercise of their functions, consular officers may address:

(a) the competent local authorities of their consular district;

(b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

#### **Article 39. Consular fees and charges**

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

### **SECTION II. FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST**

#### **Article 40. Protection of consular officers**

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

#### **Article 41. Personal inviolability of consular officers**

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this article, consular officers shall not be committed to prison or be liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

#### **Article 42. Notification of arrest, detention or prosecution**

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

#### **Article 43. Immunity from jurisdiction**

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2. The provisions of paragraph 1 of this article shall not, however, apply in respect of a civil action either:

(a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or

(b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

#### **Article 44. Liability to give evidence**

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

#### **Article 45. Waiver of privileges and immunities**

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph 3 of this article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

**Article 46. Exemption from registration of aliens and residence permits**

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

**Article 47. Exemption from work permits**

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this article.

**Article 48. Social security exemption**

1. Subject to the provisions of paragraph 3 of this article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

**Article 49. Exemption from taxation**

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of article 32;
- (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of article 51;
- (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

#### **Article 50. Exemption from customs duties and inspection**

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the consular post;

(b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph (b) of paragraph 1 of this article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

#### **Article 51. Estate of a member of the consular post or of a member of his family**

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

(a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;

(b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

#### **Article 52. Exemption from personal services and contributions**

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

#### **Article 53. Beginning and end of consular privileges and immunities**

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with

paragraph 1 of this article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

#### Article 54. Obligations of third States

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*.

#### Article 55. Respect for the laws and regulations of the receiving State

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

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

**Article 56. Insurance against third party risks**

Members of the consular post shall comply with any requirements imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

**Article 57. Special provisions concerning private gainful occupation**

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

2. Privileges and immunities provided in this chapter shall not be accorded:

(a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;

(b) to members of the family of a person referred to in subparagraph (a) of this paragraph or to members of his private staff;

(c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

**CHAPTER III. REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS****Article 58. General provisions relating to facilities, privileges and immunities**

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of article 54 and paragraphs 2 and 3 of article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by articles 59, 60, 61 and 62.

2. Articles 42 and 43, paragraph 3 of article 44, articles 45 and 53 and paragraph 1 of article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by articles 63, 64, 65, 66 and 67.

3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

**Article 59. Protection of the consular premises**

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

**Article 60. Exemption from taxation of consular premises**

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

**Article 61. Inviolability of consular archives and documents**

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

**Article 62. Exemption from customs duties**

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

**Article 63. Criminal proceedings**

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

**Article 64. Protection of honorary consular officers**

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

**Article 65. Exemption from registration of aliens and residence permits**

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

**Article 66. Exemption from taxation**

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

**Article 67. Exemption from personal services and contributions**

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

**Article 68. Optional character of the institution of honorary consular officers**

Each State is free to decide whether it will appoint or receive honorary consular officers.

## CHAPTER IV. GENERAL PROVISIONS

### Article 69. Consular agents who are not heads of consular posts

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.

2. The conditions under which the consular agencies referred to in paragraph 1 of this article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

### Article 70. Exercise of consular functions by diplomatic missions

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3. In the exercise of consular functions a diplomatic mission may address:

- (a) the local authorities of the consular district;
- (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this article shall continue to be governed by the rules of international law concerning diplomatic relations.

### Article 71. Nationals or permanent residents of the receiving State

1. Except insofar as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privileges provided in paragraph 3 of article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this article, shall enjoy facilities, privileges and immunities only insofar as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only insofar as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

### Article 72. Non-discrimination

1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

- (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

#### **Article 73. Relationship between the present Convention and other international agreements**

1. The provisions of the present Convention shall not affect other international agreements in force as between States Parties to them.

2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

### **CHAPTER V. FINAL PROVISIONS**

#### **Article 74. Signature**

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

#### **Article 75. Ratification**

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 76. Accession**

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 77. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### **Article 78. Notifications by the Secretary-General**

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 74:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 74, 75 and 76;

(b) of the date on which the present Convention will enter into force, in accordance with article 77.

#### **Article 79. Authentic texts**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 74.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this twenty-fourth day of April, one thousand nine hundred and sixty-three.

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## **15.(a) OPTIONAL PROTOCOL TO THE VIENNA CONVENTION ON CONSULAR RELATIONS CONCERNING ACQUISITION OF NATIONALITY**

Done at Vienna on 24 April 1963

Entry into force: 19 March 1967

United Nations, *Treaty Series*, vol. 596, p. 469; Reg. No. 8639

*The States Parties to the present Protocol and to the Vienna Convention on Consular Relations*, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

*Expressing their wish* to establish rules between them concerning acquisition of nationality by members of the consular post and by members of their families forming part of their households,

*Have agreed* as follows:

### **Article I**

For the purposes of the present Protocol, the expression “members of the consular post” shall have the meaning assigned to it in subparagraph (g) of paragraph 1 of article 1 of the Convention, namely, “consular officers, consular employees and members of the service staff”.

### **Article II**

Members of the consular post not being nationals of the receiving State, and members of their families forming part of their households, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

### **Article III**

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

### **Article IV**

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### **Article V**

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### Article VI

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification of or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### Article VII

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the Protocol and of the deposit of instruments of ratification or accession, in accordance with articles III, IV and V;

(b) of the date on which the present Protocol will enter into force, in accordance with article VI.

#### Article VIII

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article III.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Vienna this twenty-fourth day of April, one thousand nine hundred and sixty-three.

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### 15.(b) OPTIONAL PROTOCOL TO THE VIENNA CONVENTION ON CONSULAR RELATIONS CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES

Done at Vienna on 24 April 1963

Entry into force: 19 March 1967

United Nations, *Treaty Series*, vol. 596, p. 487; Reg. No. 8640

*The States Parties to the present Protocol and to the Vienna Convention on Consular Relations*, hereinafter referred to as "the Convention," adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

*Expressing their wish* to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period.

*Have agreed* as follows:

#### Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

**Article II**

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

**Article III**

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

**Article IV**

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

**Article V**

The present Protocol shall be open for signature by all States which may become Parties to the Convention as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

**Article VI**

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article VII**

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article VIII**

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article IX**

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles V, VI and VII;

- (b) of declarations made in accordance with article IV of the present Protocol;
- (c) of the date on which the present Protocol will enter into force, in accordance with article VIII.

#### Article X

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

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## 16. CONVENTION ON SPECIAL MISSIONS

Done at New York on 8 December 1969

Entry into force: 21 June 1985

United Nations, *Treaty Series*, vol. 1400, p. 231; Reg. No. 23431

*The States Parties to the present Convention,*

*Recalling* that special treatment has always been accorded to special missions,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the development of friendly relations and cooperation among States,

*Recalling* that the importance of the question of special missions was recognized during the United Nations Conference on Diplomatic Intercourse and Immunities and in resolution I adopted by the Conference on 10 April 1961,

*Considering* that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations, which was opened for signature on 18 April 1961,

*Considering* that the United Nations Conference on Consular Relations adopted the Vienna Convention on Consular Relations, which was opened for signature on 24 April 1963,

*Believing* that an international convention on special missions would complement those two Conventions and would contribute to the development of friendly relations among nations, whatever their constitutional and social systems,

*Realizing* that the purpose of privileges and immunities relating to special missions is not to benefit individuals but to ensure the efficient performance of the functions of special missions as missions representing the State,

*Affirming* that the rules of customary international law continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed* as follows:

#### Article 1. Use of terms

For the purposes of the present Convention:

(a) a “special mission” is a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task;

(b) a “permanent diplomatic mission” is a diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations;

(c) a “consular post” is any consulate-general, consulate, vice-consulate or consular agency;

(d) the “head of a special mission” is the person charged by the sending State with the duty of acting in that capacity;

(e) a “representative of the sending State in the special mission” is any person on whom the sending State has conferred that capacity;

(f) the “members of a special mission” are the head of the special mission, the representatives of the sending State in the special mission and the members of the staff of the special mission;

(g) the “members of the staff of the special mission” are the members of the diplomatic staff, the administrative and technical staff and the service staff of the special mission;

(h) the “members of the diplomatic staff” are the members of the staff of the special mission who have diplomatic status for the purposes of the special mission;

(i) the “members of the administrative and technical staff” are the members of the staff of the special mission employed in the administrative and technical service of the special mission;

(j) the “members of the service staff” are the members of the staff of the special mission employed by it as household workers or for similar tasks;

(k) the “private staff” are persons employed exclusively in the private service of the members of the special mission.

#### **Article 2. Sending of a special mission**

A State may send a special mission to another State with the consent of the latter, previously obtained through the diplomatic or another agreed or mutually acceptable channel.

#### **Article 3. Functions of a special mission**

The functions of a special mission shall be determined by the mutual consent of the sending and the receiving State.

#### **Article 4. Sending of the same special mission to two or more States**

A State which wishes to send the same special mission to two or more States shall so inform each receiving State when seeking the consent of that State.

#### **Article 5. Sending of a joint special mission by two or more States**

Two or more States which wish to send a joint special mission to another State shall so inform the receiving State when seeking the consent of that State.

#### **Article 6. Sending of special missions by two or more States in order to deal with a question of common interest**

Two or more States may each send a special mission at the same time to another State, with the consent of that State obtained in accordance with article 2, in order to deal together, with the agreement of all of these States, with a question of common interest to all of them.

#### **Article 7. Non-existence of diplomatic or consular relations**

The existence of diplomatic or consular relations is not necessary for the sending or reception of a special mission.

**Article 8. Appointment of the members of the special mission**

Subject to the provisions of articles 10, 11 and 12, the sending State may freely appoint the members of the special mission after having given to the receiving State all necessary information concerning the size and composition of the special mission, and in particular the names and designations of the persons it intends to appoint. The receiving State may decline to accept a special mission of a size that is not considered by it to be reasonable, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission. It may also, without giving reasons, decline to accept any person as a member of the special mission.

**Article 9. Composition of the special mission**

1. A special mission shall consist of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

2. When members of a permanent diplomatic mission or of a consular post in the receiving State are included in a special mission, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

**Article 10. Nationality of the members of the special mission**

1. The representatives of the sending State in the special mission and the members of its diplomatic staff should in principle be of the nationality of the sending State.

2. Nationals of the receiving State may not be appointed to a special mission except with the consent of that State, which may be withdrawn at any time.

3. The receiving State may reserve the right provided for in paragraph 2 of this article with regard to nationals of a third State who are not also nationals of the sending State.

**Article 11. Notifications**

1. The Ministry of Foreign Affairs of the receiving State, or such other organ of that State as may be agreed, shall be notified of:

- (a) the composition of the special mission and any subsequent changes therein;
- (b) the arrival and final departure of members of the mission and the termination of their functions with the mission;
- (c) the arrival and final departure of any person accompanying a member of the mission;
- (d) the engagement and discharge of persons resident in the receiving State as members of the mission or as private staff;
- (e) the appointment of the head of the special mission or, if there is none, of the representative referred to in paragraph 1 of article 14, and of any substitute for them;
- (f) the location of the premises occupied by the special mission and of the private accommodation enjoying inviolability under articles 30, 36 and 39, as well as any other information that may be necessary to identify such premises and accommodation.

2. Unless it is impossible, notification of arrival and final departure must be given in advance.

**Article 12. Persons declared “non grata” or not acceptable**

1. The receiving State may, at any time and without having to explain its decision, notify the sending State that any representative of the sending State in the special mission or any member of its diplomatic staff is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses, or fails within a reasonable period, to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the special mission.

#### **Article 13. Commencement of the functions of a special mission**

1. The functions of a special mission shall commence as soon as the mission enters into official contact with the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

2. The commencement of the functions of a special mission shall not depend upon presentation of the mission by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers.

#### **Article 14. Authority to act on behalf of the special mission**

1. The head of the special mission or, if the sending State has not appointed a head, one of the representatives of the sending State designated by the latter is authorized to act on behalf of the special mission and to address communications to the receiving State. The receiving State shall address communications concerning the special mission to the head of the mission, or, if there is none, to the representative referred to above, either direct or through the permanent diplomatic mission.

2. However, a member of the special mission may be authorized by the sending State, by the head of the special mission or, if there is none, by the representative referred to in paragraph 1 of this article, either to substitute for the head of the special mission or for the aforesaid representative or to perform particular acts on behalf of the mission.

#### **Article 15. Organ of the receiving State with which official business is conducted**

All official business with the receiving State entrusted to the special mission by the sending State shall be conducted with or through the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

#### **Article 16. Rules concerning precedence**

1. Where two or more special missions meet in the territory of the receiving State or of a third State, precedence among the missions shall be determined, in the absence of a special agreement, according to the alphabetical order of the names of the States used by the protocol of the State in whose territory the missions are meeting.

2. Precedence among two or more special missions which meet on a ceremonial or formal occasion shall be governed by the protocol in force in the receiving State.

3. Precedence among the members of the same special mission shall be that which is notified to the receiving State or to the third State in whose territory two or more special missions are meeting.

#### **Article 17. Seat of the special mission**

1. A special mission shall have its seat in the locality agreed by the States concerned.

2. In the absence of agreement, the special mission shall have its seat in the locality where the Ministry of Foreign Affairs of the receiving State is situated.

3. If the special mission performs its functions in different localities, the States concerned may agree that it shall have more than one seat from among which they may choose one as the principal seat.

#### **Article 18. Meeting of special missions in the territory of a third State**

1. Special missions from two or more States may meet in the territory of a third State only after obtaining the express consent of that State, which retains the right to withdraw it.

2. In giving its consent, the third State may lay down conditions which shall be observed by the sending States.

3. The third State shall assume in respect of the sending States the rights and obligations of a receiving State to the extent that it indicates in giving its consent.

#### **Article 19. Right of the special mission to use the flag and emblem of the sending State**

1. A special mission shall have the right to use the flag and emblem of the sending State on the premises occupied by the mission, and on its means of transport when used on official business.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the receiving State.

#### **Article 20. End of the functions of a special mission**

1. The functions of a special mission shall come to an end, *inter alia*, upon:

- (a) the agreement of the States concerned;
- (b) the completion of the task of the special mission;
- (c) the expiry of the duration assigned for the special mission, unless it is expressly extended;
- (d) notification by the sending State that it is terminating or recalling the special mission;
- (e) notification by the receiving State that it considers the special mission terminated.

2. The severance of diplomatic or consular relations between the sending State and the receiving State shall not of itself have the effect of terminating special missions existing at the time of such severance.

#### **Article 21. Status of the Head of State and persons of high rank**

1. The Head of the sending State, when he leads a special mission, shall enjoy in the receiving State or in a third State the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a special mission of the sending State, shall enjoy in the receiving State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law.

#### **Article 22. General facilities**

The receiving State shall accord to the special mission the facilities required for the performance of its functions, having regard to the nature and task of the special mission.

#### **Article 23. Premises and accommodation**

The receiving State shall assist the special mission, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members.

#### **Article 24. Exemption of the premises of the special mission from taxation**

1. To the extent compatible with the nature and duration of the functions performed by the special mission, the sending State and the members of the special mission acting on behalf of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises occupied by the special mission, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or with a member of the special mission.

#### **Article 25. Inviolability of the premises**

1. The premises where the special mission is established in accordance with the present Convention shall be inviolable. The agents of the receiving State may not enter the said premises, except with the consent of the head of the special mission or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the receiving State. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution.

#### **Article 26. Inviolability of archives and documents**

The archives and documents of the special mission shall be inviolable at all times and wherever they may be. They should, when necessary, bear visible external marks of identification.

#### **Article 27. Freedom of movement**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel in its territory as is necessary for the performance of the functions of the special mission.

#### **Article 28. Freedom of communication**

1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, its consular posts and its other special missions or with sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.

3. Where practicable, the special mission shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission of the sending State.

4. The bag of the special mission shall not be opened or detained.

5. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.

6. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the special mission may designate couriers *ad hoc* of the special mission. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the special mission's bag in his charge.

8. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

#### **Article 29. Personal inviolability**

The persons of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

#### **Article 30. Inviolability of the private accommodation**

1. The private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.

2. Their papers, their correspondence and, except as provided in paragraph 4 of article 31, their property shall likewise enjoy inviolability.

#### **Article 31. Immunity from jurisdiction**

1. The representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.

2. They shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions;

(d) an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.

3. The representatives of the sending State in the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of a representative of the sending State in the special mission or a member of its diplomatic staff except in the cases coming under subparagraphs (a), (b), (c) and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

5. The immunity from jurisdiction of the representatives of the sending State in the special mission and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.

**Article 32. Exemption from social security legislation**

1. Subject to the provisions of paragraph 3 of this article, representatives of the sending State in the special mission and members of its diplomatic staff shall, in respect of services rendered for the sending State, be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a representative of the sending State in the special mission or of a member of its diplomatic staff, on condition:

(a) that such employed persons are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. Representatives of the sending State in the special mission and members of its diplomatic staff who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State where such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

**Article 33. Exemption from dues and taxes**

The representatives of the sending State in the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of article 44;

(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 24.

**Article 34. Exemption from personal services**

The receiving State shall exempt the representatives of the sending State in the special mission and the members of its diplomatic staff from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

**Article 35. Exemption from customs duties and inspection**

1. Within the limits of such laws and regulations as it may adopt, the receiving State shall permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the special mission;
- (b) articles for the personal use of the representatives of the sending State in the special mission and the members of its diplomatic staff.

2. The personal baggage of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

#### **Article 36. Administrative and technical staff**

Members of the administrative and technical staff of the special mission shall enjoy the privileges and immunities specified in articles 29 to 34, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 35 in respect of articles imported at the time of their first entry into the territory of the receiving State.

#### **Article 37. Service staff**

Members of the service staff of the special mission shall enjoy immunity from the jurisdiction of the receiving State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in article 32.

#### **Article 38. Private staff**

Private staff of the members of the special mission shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

#### **Article 39. Members of the family**

1. Members of the families of representatives of the sending State in the special mission and of members of its diplomatic staff shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in articles 29 to 35 provided that they are not nationals of or permanently resident in the receiving State.

2. Members of the families of members of the administrative and technical staff of the special mission shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in article 36 provided that they are not nationals of or permanently resident in the receiving State.

#### **Article 40. Nationals of the receiving State and persons permanently resident in the receiving State**

1. Except insofar as additional privileges and immunities may be granted by the receiving State, the representatives of the sending State in the special mission and the members of its diplomatic staff who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions.

2. Other members of the special mission and private staff who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent granted to them

by that State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

#### **Article 41. Waiver of immunity**

1. The sending State may waive the immunity from jurisdiction of its representatives in the special mission, of the members of its diplomatic staff, and of other persons enjoying immunity under articles 36 to 40.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

#### **Article 42. Transit through the territory of a third State**

1. If a representative of the sending State in the special mission or a member of its diplomatic staff passes through or is in the territory of a third State while proceeding to take up his functions or returning to the sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, whether travelling with him or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the special mission, or of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. Subject to the provisions of paragraph 4 of this article, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the special mission, members of their families or couriers, and has raised no objection to it.

5. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and the bags of the special mission, when the use of the territory of the third State is due to *force majeure*.

#### **Article 43. Duration of privileges and immunities**

1. Every member of the special mission shall enjoy the privileges and immunities to which he is entitled from the moment he enters the territory of the receiving State for the purpose of performing his functions in the special mission or, if he is already in its territory, from the moment when his appointment is notified to the Ministry of Foreign Affairs or such other organ of the receiving State as may be agreed.

2. When the functions of a member of the special mission have come to an end, his privileges and immunities shall normally cease at the moment when he leaves the territory of the receiving State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, in respect of acts performed by such a member in the exercise of his functions, immunity shall continue to subsist.

3. In the event of the death of a member of the special mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of the receiving State.

**Article 44. Property of a member of the special mission  
or of a member of his family in the event of death**

1. In the event of the death of a member of the special mission or of a member of his family accompanying him, if the deceased was not a national of or permanently resident in the receiving State, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

2. Estate, succession and inheritance duties shall not be levied on movable property which is in the receiving State solely because of the presence there of the deceased as a member of the special mission or of the family of a member of the mission.

**Article 45. Facilities to leave the territory of the receiving State  
and to remove the archives of the special mission**

1. The receiving State must, even in case of armed conflict, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons, irrespective of their nationality, to leave at the earliest possible moment. In particular it must, in case of need, place at their disposal the necessary means of transport for themselves and their property.

2. The receiving State must grant the sending State facilities for removing the archives of the special mission from the territory of the receiving State.

**Article 46. Consequences of the cessation of the functions of the special mission**

1. When the functions of a special mission come to an end, the receiving State must respect and protect the premises of the special mission so long as they are assigned to it, as well as the property and archives of the special mission. The sending State must withdraw the property and archives within a reasonable period of time.

2. In case of the absence or severance of diplomatic or consular relations between the sending State and the receiving State and if the functions of the special mission have come to an end, the sending State may, even if there is an armed conflict, entrust the custody of the property and archives of the special mission to a third State acceptable to the receiving State.

**Article 47. Respect for the laws and regulations of the receiving State and  
use of the premises of the special mission**

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying those privileges and immunities under the present Convention to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The premises of the special mission must not be used in any manner incompatible with the functions of the special mission as envisaged in the present Convention, in other rules of general international law or in any special agreements in force between the sending and the receiving State.

**Article 48. Professional or commercial activity**

The representatives of the sending State in the special mission and the members of its diplomatic staff shall not practise for personal profit any professional or commercial activity in the receiving State.

**Article 49. Non-discrimination**

1. In the application of the provisions of the present Convention, no discrimination shall be made as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its special mission in the sending State;

(b) where States modify among themselves, by custom or agreement, the extent of facilities, privileges and immunities for their special missions, although such a modification has not been agreed with other States, provided that it is not incompatible with the object and purpose of the present Convention and does not affect the enjoyment of the rights or the performance of the obligations of third States.

**Article 50. Signature**

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, until 31 December 1970 at United Nations Headquarters in New York.

**Article 51. Ratification**

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 52. Accession**

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 50. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 53. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article 54. Notifications by the depositary**

The Secretary-General of the United Nations shall inform all States belonging to any of the categories mentioned in article 50:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession in accordance with articles 50, 51 and 52;

(b) of the date on which the present Convention will enter into force in accordance with article 53.

**Article 55. Authentic texts**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the categories mentioned in article 50.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention, opened for signature at New York on 16 December 1969.

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## **16.(a) OPTIONAL PROTOCOL TO THE CONVENTION ON SPECIAL MISSIONS CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES**

Done at New York on 8 December 1969

Entry into force: 21 June 1985

United Nations, *Treaty Series*, vol. 1400, p. 339; Reg. No. 23431

*The States Parties to the present Protocol and to the Convention on Special Missions*, hereinafter referred to as "the Convention," adopted by the General Assembly of the United Nations on 8 December 1969,

*Expressing their wish* to resort, in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention, to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period of time,

*Have agreed* follows:

### **Article I**

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by a written application made by any party to the dispute being a Party to the present Protocol.

### **Article II**

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by a written application.

### **Article III**

1. Within the said period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by a written application.

### **Article IV**

The present Protocol shall be open for signature by all States which may become Parties to the Convention, until 31 December 1970 at United Nations Headquarters in New York.

### **Article V**

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article VI

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### Article VII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever day is later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### Article VIII

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession in accordance with articles IV, V and VI;

(b) of the date on which the present Protocol will enter into force in accordance with article VII.

#### Article IX

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article IV.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol, opened for signature at New York on 16 December 1969.

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## 17. VIENNA CONVENTION ON THE REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS OF A UNIVERSAL CHARACTER

Done at Vienna on 14 March 1975

Not yet in force

United Nations, Doc. A/CONF.67/16

*The States Parties to the present Convention,*

*Recognizing* the increasingly important role of multilateral diplomacy in relations between States and the responsibilities of the United Nations, its specialized agencies and other international organizations of a universal character within the international community,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the promotion of friendly relations and cooperation among States,

*Recalling* the work of codification and progressive development of international law applicable to bilateral relations between States which was achieved by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, and the Convention on Special Missions of 1969,

*Believing* that an international convention on the representation of States in their relations with international organizations of a universal character would contribute to the promotion of friendly relations and cooperation among States, irrespective of their political, economic and social systems,

*Recalling* the provisions of Article 105 of the Charter of the United Nations,

*Recognizing* that the purpose of privileges and immunities contained in the present Convention is not to benefit individuals but to ensure the efficient performance of their functions in connection with organizations and conferences,

*Taking account* of the Convention on the Privileges and Immunities of the United Nations of 1946, the Convention on the Privileges and Immunities of the Specialized Agencies of 1947 and other agreements in force between States and between States and international organizations,

*Affirming* that the rules of customary international law continue to govern questions not expressly regulated by the provisions of the present Convention,

*Have agreed* as follows:

## PART I. INTRODUCTION

### Article 1. Use of terms

1. For the purposes of the present Convention:

- (1) "international organization" means an intergovernmental organization;
- (2) "international organization of a universal character" means the United Nations, its specialized agencies, the International Atomic Energy Agency and any similar organization whose membership and responsibilities are on a worldwide scale;
- (3) "Organization" means the international organization in question;
- (4) "organ" means:
  - (a) any principal or subsidiary organ of an international organization, or
  - (b) any commission, committee or subgroup of any such organ, in which States are members;
- (5) "conference" means a conference of States convened by or under the auspices of an international organization;
- (6) "mission" means, as the case may be, the permanent mission or the permanent observer mission;
- (7) "permanent mission" means a mission of permanent character, representing the State, sent by a State member of an international organization to the Organization;
- (8) "permanent observer mission" means a mission of permanent character, representing the State, sent to an international organization by a State not a member of the Organization;
- (9) "delegation" means, as the case may be, the delegation to an organ or the delegation to a conference;
- (10) "delegation to an organ" means the delegation sent by a State to participate on its behalf in the proceedings of the organ;
- (11) "delegation to a conference" means the delegation sent by a State to participate on its behalf in the conference;
- (12) "observer delegation" means, as the case may be, the observer delegation to an organ or the observer delegation to a conference;
- (13) "observer delegation to an organ" means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the organ;

(14) “observer delegation to a conference” means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the conference;

(15) “host State” means the State in whose territory:

- (a) the Organization has its seat or an office, or
- (b) a meeting of an organ or a conference is held;

(16) “sending State” means the State which sends:

- (a) a mission to the Organization at its seat or to an office of the Organization, or
- (b) a delegation to an organ or a delegation to a conference, or
- (c) an observer delegation to an organ or an observer delegation to a conference;

(17) “head of mission” means, as the case may be, the permanent representative or the permanent observer;

(18) “permanent representative” means the person charged by the sending State with the duty of acting as the head of the permanent mission;

(19) “permanent observer” means the person charged by the sending State with the duty of acting as the head of the permanent observer mission;

(20) “members of the mission” means the head of mission and the members of the staff;

(21) “head of delegation” means the delegate charged by the sending State with the duty of acting in that capacity;

(22) “delegate” means any person designated by a State to participate as its representative in the proceedings of an organ or in a conference;

(23) “members of the delegation” means the delegates and the members of the staff;

(24) “head of the observer delegation” means the observer delegate charged by the sending State with the duty of acting in that capacity;

(25) “observer delegate” means any person designated by a State to attend as an observer the proceedings of an organ or of a conference;

(26) “members of the observer delegation” means the observer delegates and the members of the staff;

(27) “members of the staff” means the members of the diplomatic staff, the administrative and technical staff and the service staff of the mission, the delegation or the observer delegation;

(28) “members of the diplomatic staff” means the members of the staff of the mission, the delegation or the observer delegation who enjoy diplomatic status for the purpose of the mission, the delegation or the observer delegation;

(29) “members of the administrative and technical staff” means the members of the staff employed in the administrative and technical service of the mission, the delegation or the observer delegation;

(30) “members of the service staff” means the members of the staff employed by the mission, the delegation or the observer delegation as household workers or for similar tasks;

(31) “private staff” means persons employed exclusively in the private service of the members of the mission or the delegation;

(32) “premises of the mission” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the mission, including the residence of the head of mission;

(33) “premises of the delegation” means the buildings or parts of buildings, irrespective of ownership, used solely as the offices of the delegation;

(34) “rules of the Organization” means, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the Organization.

2. The provisions of paragraph 1 of this article regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

### **Article 2. Scope of the present Convention**

1. The present Convention applies to the representation of States in their relations with any international organization of a universal character, and to their representation at conferences convened by or under the auspices of such an organization, when the Convention has been accepted by the host State and the Organization has completed the procedure envisaged by article 90.

2. The fact that the present Convention does not apply to other international organizations is without prejudice to the application to the representation of States in their relations with such other organizations of any of the rules set forth in the Convention which would be applicable under international law independently of the Convention.

3. The fact that the present Convention does not apply to other conferences is without prejudice to the application to the representation of States at such other conferences of any of the rules set forth in the Convention which would be applicable under international law independently of the Convention.

4. Nothing in the present Convention shall preclude the conclusion of agreements between States or between States and international organizations making the Convention applicable in whole or in part to international organizations or conferences other than those referred to in paragraph 1 of this article.

### **Article 3. Relationship between the present Convention and the relevant rules of international organizations or conferences**

The provisions of the present Convention are without prejudice to any relevant rules of the Organization or to any relevant rules of procedure of the Conference.

### **Article 4. Relationship between the present Convention and other international agreements**

The provisions of the present Convention:

(a) are without prejudice to other international agreements in force between States or between States and international organizations of a universal character, and

(b) shall not preclude the conclusion of other international agreements regarding the representation of States in their relations with international organizations of a universal character or their representation at conferences convened by or under the auspices of such organizations.

## **PART II. MISSIONS TO INTERNATIONAL ORGANIZATIONS**

### **Article 5. Establishment of missions**

1. Member States may, if the rules of the Organization so permit, establish permanent missions for the performance of the functions mentioned in article 6.

2. Non-member States may, if the rules of the Organization so permit, establish permanent observer missions for the performance of the functions mentioned in article 7.

3. The Organization shall notify the host State of the institution of a mission prior to its establishment.

### **Article 6. Functions of the permanent mission**

The functions of the permanent mission consist, *inter alia*, in:

(a) ensuring the representation of the sending State to the Organization;

- (b) maintaining liaison between the sending State and the Organization;
- (c) negotiating with and within the Organization;
- (d) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;
- (e) ensuring the participation of the sending State in the activities of the Organization;
- (f) protecting the interests of the sending State in relation to the Organization;
- (g) promoting the realization of the purposes and principles of the Organization by cooperating with and within the Organization.

#### **Article 7. Functions of the permanent observer mission**

The functions of the permanent observer mission consist, inter alia, in:

- (a) ensuring the representation of the sending State and safeguarding its interests in relation to the Organization and maintaining liaison with it;
- (b) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;
- (c) promoting cooperation with the Organization and negotiating with it.

#### **Article 8. Multiple accreditation or appointment**

1. The sending State may accredit the same person as head of mission to two or more international organizations or appoint a head of mission as a member of the diplomatic staff of another of its missions.

2. The sending State may accredit a member of the diplomatic staff of the mission as head of mission to other international organizations or appoint a member of the staff of the mission as a member of the staff of another of its missions.

3. Two or more States may accredit the same person as head of mission to the same international organization.

#### **Article 9. Appointment of the members of the mission**

Subject to the provisions of articles 14 and 73, the sending State may freely appoint the members of the mission.

#### **Article 10. Credentials of the head of mission**

The credentials of the head of mission shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the Organization so permit, by another competent authority of the sending State and shall be transmitted to the Organization.

#### **Article 11. Accreditation to organs of the Organization**

1. A member State may specify in the credentials issued to its permanent representative that he is authorized to act as a delegate to one or more organs of the Organization.

2. Unless a member State provides otherwise, its permanent representative may act as a delegate to organs of the Organization for which there are no special requirements as regards representation.

3. A non-member State may specify in the credentials issued to its permanent observer that he is authorized to act as an observer delegate to one or more organs of the Organization when this is permitted by the rules of the Organization or the organ concerned.

**Article 12. Full powers for the conclusion of a treaty with the Organization**

1. The head of mission, by virtue of his functions and without having to produce full powers, is considered as representing his State for the purpose of adopting the text of a treaty between that State and the Organization.

2. The head of mission is not considered by virtue of his functions as representing his State for the purpose of signing a treaty, or signing a treaty *ad referendum*, between that State and the Organization unless it appears from the practice of the Organization, or from other circumstances, that the intention of the parties was to dispense with full powers.

**Article 13. Composition of the mission**

In addition to the head of mission, the mission may include diplomatic staff, administrative and technical staff and service staff.

**Article 14. Size of the mission**

The size of the mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of the particular mission and the circumstances and conditions in the host State.

**Article 15. Notifications**

1. The sending State shall notify the Organization of:

(a) the appointment, position, title and order of precedence of the members of the mission, their arrival, their final departure or the termination of their functions with the mission, and any other changes affecting their status that may occur in the course of their service with the mission;

(b) the arrival and final departure of any person belonging to the family of a member of the mission and forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;

(c) the arrival and final departure of persons employed on the private staff of members of the mission and the termination of their employment as such;

(d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the mission or as persons employed on the private staff;

(e) the location of the premises of the mission and of the private residences enjoying inviolability under articles 23 and 29, as well as any other information that may be necessary to identify such premises and residences.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization shall transmit to the host State the notification referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notification referred to in paragraphs 1 and 2 of this article.

**Article 16. Acting head of mission**

If the post of head of mission is vacant, or if the head of mission is unable to perform his functions, the sending State may appoint an acting head of mission whose name shall be notified to the Organization and by it to the host State.

**Article 17. Precedence**

1. Precedence among permanent representatives shall be determined by the alphabetical order of the names of the States used in the Organization.

2. Precedence among permanent observers shall be determined by the alphabetical order of the names of the States used in the Organization.

#### **Article 18. Location of the mission**

Missions should be established in the locality where the Organization has its seat. However, if the rules of the Organization so permit and with the prior consent of the host State, the sending State may establish a mission or an office of a mission in a locality other than that in which the Organization has its seat.

#### **Article 19. Use of flag and emblem**

1. The mission shall have the right to use the flag and emblem of the sending State on its premises. The head of mission shall have the same right as regards his residence and means of transport.

2. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the host State.

#### **Article 20. General facilities**

1. The host State shall accord to the mission all necessary facilities for the performance of its functions.

2. The Organization shall assist the mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

#### **Article 21. Premises and accommodation**

1. The host State and the Organization shall assist the sending State in obtaining on reasonable terms premises necessary for the mission in the territory of the host State. Where necessary, the host State shall facilitate in accordance with its laws the acquisition of such premises.

2. Where necessary, the host State and the Organization shall also assist the mission in obtaining on reasonable terms suitable accommodation for its members.

#### **Article 22. Assistance by the Organization in respect of privileges and immunities**

1. The Organization shall, where necessary, assist the sending State, its mission and the members of its mission in securing the enjoyment of the privileges and immunities provided for under the present Convention.

2. The Organization shall, where necessary, assist the host State in securing the discharge of the obligations of the sending State, its mission and the members of its mission in respect of the privileges and immunities provided for under the present Convention.

#### **Article 23. Inviolability of premises**

1. The premises of the mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of mission.

2. (a) The host State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

(b) In case of an attack on the premises of the mission, the host State shall take all appropriate steps to prosecute and punish persons who have committed the attack.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

**Article 24. Exemption of the premises from taxation**

1. The premises of the mission of which the sending State or any person acting on its behalf is the owner or the lessee shall be exempt from all national, regional or municipal dues and taxes other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with any person acting on its behalf.

**Article 25. Inviolability of archives and documents**

The archives and documents of the mission shall be inviolable at all times and wherever they may be.

**Article 26. Freedom of movement**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure freedom of movement and travel in its territory to all members of the mission and members of their families forming part of their households.

**Article 27. Freedom of communication**

1. The host State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions, delegations and observer delegations, wherever situated, the mission may employ all appropriate means, including couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The bag of the mission shall not be opened or detained.

4. The packages constituting the bag of the mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the mission.

5. The courier of the mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate couriers *ad hoc* of the mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the mission's bag in his charge.

7. The bag of the mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the mission. By arrangement with the appropriate authorities of the host State, the mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

**Article 28. Personal inviolability**

The persons of the head of mission and of the members of the diplomatic staff of the mission shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity and to prosecute and punish persons who have committed such attacks.

**Article 29. Inviolability of residence and property**

1. The private residence of the head of mission and of the members of the diplomatic staff of the mission shall enjoy the same inviolability and protection as the premises of the mission.

2. The papers, correspondence and, except as provided in paragraph 2 of article 30, the property of the head of mission or of members of the diplomatic staff of the mission shall also enjoy inviolability.

**Article 30. Immunity from jurisdiction**

1. The head of mission and the members of the diplomatic staff of the mission shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the host State, unless the person in question holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the person in question is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the person in question in the host State outside his official functions.

2. No measures of execution may be taken in respect of the head of mission or a member of the diplomatic staff of the mission except in cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

3. The head of mission and the members of the diplomatic staff of the mission are not obliged to give evidence as witnesses.

4. The immunity of the head of mission or of a member of the diplomatic staff of the mission from the jurisdiction of the host State does not exempt him from the jurisdiction of the sending State.

**Article 31. Waiver of immunity**

1. The immunity from jurisdiction of the head of mission and members of the diplomatic staff of the mission and of persons enjoying immunity under article 36 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 of this article in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

**Article 32. Exemption from social security legislation**

1. Subject to the provisions of paragraph 3 of this article, the head of mission and the members of the diplomatic staff of the mission shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of the head of mission or of a member of the diplomatic staff of the mission, on condition:

- (a) that such employed persons are not nationals of or permanently resident in the host State; and
- (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of mission and the members of the diplomatic staff of the mission who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

### **Article 33. Exemption from dues and taxes**

The head of mission and the members of the diplomatic staff of the mission shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 38;
- (d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 24.

### **Article 34. Exemption from personal services**

The host State shall exempt the head of mission and the members of the diplomatic staff of the mission from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

### **Article 35. Exemption from customs duties and inspection**

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the mission;
- (b) articles for the personal use of the head of mission or a member of the diplomatic staff of the mission, including articles intended for his establishment.

2. The personal baggage of the head of mission or a member of the diplomatic staff of the mission shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations

of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

### **Article 36. Privileges and immunities of other persons**

1. The members of the family of the head of mission forming part of his household and the members of the family of a member of the diplomatic staff of the mission forming part of his household shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33, 34 and in paragraphs 1(b) and 2 of article 35.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households who are not nationals of or permanently resident in the host State, shall enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33 and 34, except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 30 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in paragraph 1 (b) of article 35 in respect of articles imported at the time of final installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the host State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption specified in article 32.

4. Private staff of members of the mission shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

### **Article 37. Nationals and permanent residents of the host State**

1. Except in so far as additional privileges and immunities may be granted by the host State, the head of mission or any member of the diplomatic staff of the mission who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission who are nationals of or permanently resident in the host State shall enjoy only immunity from jurisdiction in respect of official acts performed in the exercise of their functions. In all other respects, those members, and persons on the private staff who are nationals of or permanently resident in the host State, shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

### **Article 38. Duration of privileges and immunities**

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization or by the sending State.

2. 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 territory, or on the expiry of a reasonable period in which to do so. 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.

3. In the event of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory.

4. In the event of the death of a member of the mission not a national of or permanently resident in the host State or of a member of his family forming part of his household, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the territory the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the mission or of the family of a member of the mission.

#### **Article 39. Professional or commercial activity**

1. The head of mission and members of the diplomatic staff of the mission shall not practise for personal profit any professional or commercial activity in the host State.

2. Except insofar as such privileges and immunities may be granted by the host State, members of the administrative and technical staff and persons forming part of the household of a member of the mission shall not, when they practise a professional or commercial activity for personal profit, enjoy any privilege or immunity in respect of acts performed in the course of or in connection with the practise of such activity.

#### **Article 40. End of functions**

The functions of the head of mission or of a member of the diplomatic staff of the mission shall come to an end, *inter alia*:

- (a) on notification of their termination by the sending State to the Organization;
- (b) if the mission is finally or temporarily recalled.

#### **Article 41. Protection of premises, property and archives**

1. When the mission is temporarily or finally recalled, the host State must respect and protect the premises, property and archives of the mission. The sending State must take all appropriate measures to terminate this special duty of the host State as soon as possible. It may entrust custody of the premises, property and archives of the mission to the Organization if it so agrees, or to a third State acceptable to the host State.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and archives of the mission from the territory of the host State.

### **PART III. DELEGATIONS TO ORGANS AND TO CONFERENCES**

#### **Article 42. Sending of delegations**

1. A State may send a delegation to an organ or to a conference in accordance with the rules of the Organization.

2. Two or more States may send the same delegation to an organ or to a conference in accordance with the rules of the Organization.

#### **Article 43. Appointment of the members of the delegation**

Subject to the provisions of articles 46 and 73, the sending State may freely appoint the members of the delegation.

#### **Article 44. Credentials of delegates**

The credentials of the head of delegation and of other delegates shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the Organization or the rules of procedure of the conference so permit, by another competent authority of the sending State. They shall be transmitted, as the case may be, to the Organization or to the conference.

#### **Article 45. Composition of the delegation**

In addition to the head of delegation, the delegation may include other delegates, diplomatic staff, administrative and technical staff and service staff.

#### **Article 46. Size of the delegation**

The size of the delegation shall not exceed what is reasonable and normal, having regard, as the case may be, to the functions of the organ or the object of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host State.

#### **Article 47. Notifications**

1. The sending State shall notify the Organization or, as the case may be, the conference of:

(a) the composition of the delegation, including the position, title and order of precedence of the members of the delegation, and any subsequent changes therein;

(b) the arrival and final departure of members of the delegation and the termination of their functions with the delegation;

(c) the arrival and final departure of any person accompanying a member of the delegation;

(d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the delegation or as persons employed on the private staff;

(e) the location of the premises of the delegation and of the private accommodation enjoying inviolability under article 59, as well as any other information that may be necessary to identify such premises and accommodation.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization or, as the case may be, the conference shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

#### **Article 48. Acting head of delegation**

1. If the head of delegation is absent or unable to perform his functions, an acting head of delegation shall be designated from among the other delegates by the head of delegation or, in case he is unable to do so, by a competent authority of the sending State. The name of the acting head of delegation shall be notified, as the case may be, to the Organization or to the conference.

2. If a delegation does not have another delegate available to serve as acting head of delegation, another person may be designated for that purpose. In such case credentials must be issued and transmitted in accordance with article 44.

#### **Article 49. Precedence**

Precedence among delegations shall be determined by the alphabetical order of the names of the States used in the Organization.

#### **Article 50. Status of the Head of State and persons of high rank**

1. The Head of State or any member of a collegial body performing the functions of Head of State under the constitution of the State concerned, when he leads the delegation, shall enjoy in the host State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law to Heads of State.

2. The Head of Government, the Minister for Foreign Affairs or other person of high rank, when he leads or is a member of the delegation, shall enjoy in the host State or in a third State, in

addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law to such persons.

#### **Article 51. General facilities**

1. The host State shall accord to the delegation all necessary facilities for the performance of its tasks.

2. The Organization or, as the case may be, the conference shall assist the delegation in obtaining those facilities and shall accord to the delegation such facilities as lie within its own competence.

#### **Article 52. Premises and accommodation**

If so requested, the host State and, where necessary, the Organization or the conference shall assist the sending State in obtaining on reasonable terms premises necessary for the delegation and suitable accommodation for its members.

#### **Article 53. Assistance in respect of privileges and immunities**

1. The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the sending State, its delegation and the members of its delegation in securing the enjoyment of the privileges and immunities provided for under the present Convention.

2. The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the host State in securing the discharge of the obligations of the sending State, its delegation and the members of its delegation in respect of the privileges and immunities provided for under the present Convention.

#### **Article 54. Exemption of the premises from taxation**

1. The sending State or any member of the delegation acting on behalf of the delegation shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the delegation other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with a member of the delegation.

#### **Article 55. Inviolability of archives and documents**

The archives and documents of the delegation shall be inviolable at all times and wherever they may be.

#### **Article 56. Freedom of movement**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of the delegation such freedom of movement and travel in its territory as is necessary for the performance of the tasks of the delegation.

#### **Article 57. Freedom of communication**

1. The host State shall permit and protect free communication on the part of the delegation for all official purposes. In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions, other delegations, and observer delegations, wherever situated, the delegation may employ all appropriate means, including couriers and messages in code or cipher. However, the delegation may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the delegation shall be inviolable. Official correspondence means all correspondence relating to the delegation and its tasks.

3. Where practicable, the delegation shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission, of a consular post, of the permanent mission or of the permanent observer mission of the sending State.

4. The bag of the delegation shall not be opened or detained.

5. The packages constituting the bag of the delegation must bear visible external marks of their character and may contain only documents or articles intended for the official use of the delegation.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the delegation may designate couriers *ad hoc* of the delegation. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the delegation's bag in his charge.

8. The bag of the delegation may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the delegation. By arrangement with the appropriate authorities of the host State, the delegation may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

#### **Article 58. Personal inviolability**

The persons of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall be inviolable. They shall not be liable, *inter alia*, to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity and to prosecute and punish persons who have committed such attacks.

#### **Article 59. Inviolability of private accommodation and property**

1. The private accommodation of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall enjoy inviolability and protection.

2. The papers, correspondence and, except as provided in paragraph 2 of article 60, the property of the head of delegation and of other delegates or members of the diplomatic staff of the delegation shall also enjoy inviolability.

#### **Article 60. Immunity from jurisdiction**

1. The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the criminal jurisdiction of the host State, and immunity from its civil and administrative jurisdiction in respect of all acts performed in the exercise of their official functions.

2. No measures of execution may be taken in respect of such persons unless they can be taken without infringing their rights under articles 58 and 59.

3. Such persons are not obliged to give evidence as witnesses.

4. Nothing in this article shall exempt such persons from the civil and administrative jurisdiction of the host State in relation to an action for damages arising from an accident caused by a vehicle, vessel or aircraft, used or owned by the persons in question, where those damages are not recoverable from insurance.

5. Any immunity of such persons from the jurisdiction of the host State does not exempt them from the jurisdiction of the sending State.

#### **Article 61. Waiver of immunity**

1. The immunity from jurisdiction of the head of delegation and of other delegates and members of the diplomatic staff of the delegation and of persons enjoying immunity under article 66 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 of this article in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

#### **Article 62. Exemption from social security legislation**

1. Subject to the provisions of paragraph 3 of this article, the head of delegation and other delegates and members of the diplomatic staff of the delegation shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation, on condition:

(a) that such employed persons are not nationals of or permanently resident in the host State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of delegation and other delegates and members of the diplomatic staff of the delegation who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

#### **Article 63. Exemption from dues and taxes**

The head of delegation and other delegates and members of the diplomatic staff of the delegation shall be exempt, to the extent practicable, from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;

- (c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 68;
- (d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 54.

#### **Article 64. Exemption from personal services**

The host State shall exempt the head of delegation and other delegates and members of the diplomatic staff of the delegation from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

#### **Article 65. Exemption from customs duties and inspection**

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the delegation;
- (b) articles for the personal use of the head of delegation or any other delegate or member of the diplomatic staff of the delegation, imported in his personal baggage at the time of his first entry into the territory of the host State to attend the meeting of the organ or conference.

2. The personal baggage of the head of delegation or any other delegate or member of the diplomatic staff of the delegation shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

#### **Article 66. Privileges and immunities of other persons**

1. The members of the family of the head of delegation who accompany him and the members of the family of any other delegate or member of the diplomatic staff of the delegation who accompany him shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 60 and 64 and in paragraphs 1 (b) and 2 of article 65 and exemption from aliens' registration obligations.

2. Members of the administrative and technical staff of the delegation shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 59, 60, 62, 63 and 64. They shall also enjoy the privileges specified in paragraph 1 (b) of article 65 in respect of articles imported in their personal baggage at the time of their first entry into the territory of the host State for the purpose of attending the meeting of the organ or conference. Members of the family of a member of the administrative and technical staff who accompany him shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 60 and 64 and in paragraph 1 (b) of article 65 to the extent accorded to such a member of the staff.

3. Members of the service staff of the delegation who are not nationals of or permanently resident in the host State shall enjoy the same immunity in respect of acts performed in the course of their duties as is accorded to members of the administrative and technical staff of the delegation, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption specified in article 62.

4. Private staff of members of the delegation shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

#### **Article 67. Nationals and permanent residents of the host State**

1. Except insofar as additional privileges and immunities may be granted by the host State the head of delegation or any other delegate or member of the diplomatic staff of the delegation who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the delegation and persons on the private staff who are nationals of or permanently resident in the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

#### **Article 68. Duration of privileges and immunities**

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State for the purpose of attending the meeting of an organ or conference or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization, by the conference or by the sending State.

2. 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 territory, or on the expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the delegation, immunity shall continue to subsist.

3. In the event of the death of a member of the delegation, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory.

4. In the event of the death of a member of the delegation not a national of or permanently resident in the host State or of a member of his family accompanying him, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the territory the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the delegation or of the family of a member of the delegation.

#### **Article 69. End of functions**

The functions of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation shall come to an end, *inter alia*:

- (a) on notification of their termination by the sending State to the Organization or the conference;
- (b) upon the conclusion of the meeting of the organ or the conference.

#### **Article 70. Protection of premises, property and archives**

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of the delegation so long as they are used by it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State as soon as possible.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

#### **PART IV. OBSERVER DELEGATIONS TO ORGANS AND TO CONFERENCES**

##### **Article 71. Sending of observer delegations**

A State may send an observer delegation to an organ or to a conference in accordance with the rules of the Organization.

##### **Article 72. General provision concerning observer delegations**

All the provisions of articles 43 to 70 of the present Convention shall apply to observer delegations.

#### **PART V. GENERAL PROVISIONS**

##### **Article 73. Nationality of the members of the mission, the delegation or the observer delegation**

1. The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and members of the diplomatic staff of the delegation, the head of the observer delegation, other observer delegates and members of the diplomatic staff of the observer delegation should in principle be of the nationality of the sending State.

2. The head of mission and members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the host State except with the consent of that State, which may be withdrawn at any time.

3. Where the head of delegation, any other delegate or any member of the diplomatic staff of the delegation or the head of the observer delegation, any other observer delegate or any member of the diplomatic staff of the observer delegation is appointed from among persons having the nationality of the host State, the consent of that State shall be assumed if it has been notified of such appointment of a national of the host State and has made no objection.

##### **Article 74. Laws concerning acquisition of nationality**

Members of the mission, the delegation or the observer delegation not being nationals of the host State, and members of their families forming part of their household or, as the case may be, accompanying them, shall not, solely by the operation of the law of the host State, acquire the nationality of that State.

##### **Article 75. Privileges and immunities in case of multiple functions**

When members of the permanent diplomatic mission or of a consular post in the host State are included in a mission, a delegation or an observer delegation, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

##### **Article 76. Cooperation between sending States and host States**

Whenever necessary and to the extent compatible with the independent exercise of the functions of the mission, the delegation or the observer delegation, the sending State shall cooperate as fully as possible with the host State in the conduct of any investigation or prosecution carried out pursuant to the provisions of articles 23, 28, 29 and 58.

**Article 77. Respect for the laws and regulations of the host State**

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

2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, unless it waives the immunity of the person concerned, recall him, terminate his functions with the mission, the delegation or the observer delegation or secure his departure, as appropriate. The sending State shall take the same action in case of grave and manifest interference in the internal affairs of the host State. The provisions of this paragraph shall not apply in the case of any act that the person concerned performed in carrying out the functions of the mission or the tasks of the delegation or of the observer delegation.

3. The premises of the mission and the premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the mission or the performance of the tasks of the delegation.

4. Nothing in this article shall be construed as prohibiting the host State from taking such measures as are necessary for its own protection. In that event the host State shall, without prejudice to articles 84 and 85, consult the sending State in an appropriate manner in order to ensure that such measures do not interfere with the normal functioning of the mission, the delegation or the observer delegation.

5. The measures provided for in paragraph 4 of this article shall be taken with the approval of the Minister for Foreign Affairs or of any other competent minister in conformity with the constitutional rules of the host State.

**Article 78. Insurance against third-party risks**

The members of the mission, of the delegation or of the observer delegation shall comply with all obligations under the laws and regulations of the host State relating to third-party liability insurance for any vehicle, vessel or aircraft used or owned by them.

**Article 79. Entry into the territory of the host State**

1. The host State shall permit entry into its territory of:

(a) members of the mission and members of their families forming part of their respective households, and

(b) members of the delegation and members of their families accompanying them, and

(c) members of the observer delegation and members of their families accompanying them.

2. Visas, when required, shall be granted as promptly as possible to any person referred to in paragraph 1 of this article.

**Article 80. Facilities for departure**

The host State shall, if requested, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the host State, and members of the families of such persons irrespective of their nationality, to leave its territory.

**Article 81. Transit through the territory of a third State**

1. If a head of mission or a member of the diplomatic staff of the mission, a head of delegation, other delegate or member of the diplomatic staff of the delegation, a head of an observer delegation, other observer delegate or member of the diplomatic staff of the observer delegation passes through or is in the territory of a third State which has granted him a passport visa if such visa was necessary, while proceeding to take up or to resume his functions, or when returning to his own country, the

third State shall accord him inviolability and such other immunities as may be required to ensure his transit.

2. The provisions of paragraph 1 of this article shall also apply in the case of:

(a) members of the family of the head of mission or of a member of the diplomatic staff of the mission forming part of his household and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(b) members of the family of the head of delegation, of any other delegate or member of the diplomatic staff of the delegation who are accompanying him and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(c) members of the family of the head of the observer delegation, of any other observer delegate or member of the diplomatic staff of the observer delegation, who are accompanying him and enjoy privileges and immunities whether travelling with him or travelling separately to join him or to return to their country.

3. In circumstances similar to those specified in paragraphs 1 and 2 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff, and of members of their families, through their territories.

4. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the host State is bound to accord under the present Convention. They shall accord to the couriers of the mission, of the delegation or of the observer delegation, who have been granted a passport visa if such visa was necessary, and to the bags of the mission, of the delegation or of the observer delegation in transit the same inviolability and protection as the host State is bound to accord under the present Convention.

5. The obligations of third States under paragraphs 1, 2, 3 and 4 of this article shall also apply to the persons mentioned respectively in those paragraphs and to the official communications and bags of the mission, of the delegation or of the observer delegation when they are present in the territory of the third State owing to *force majeure*.

#### **Article 82. Non-recognition of States or governments or absence of diplomatic or consular relations**

1. The rights and obligations of the host State and of the sending State under the present Convention shall be affected neither by the non-recognition by one of those States of the other State or of its government nor by the non-existence or the severance of diplomatic or consular relations between them.

2. The establishment or maintenance of a mission, the sending or attendance of a delegation or of an observer delegation or any act in application of the present Convention shall not by itself imply recognition by the sending State of the host State or its government or by the host State of the sending State or its government.

#### **Article 83. Non-discrimination**

In the application of the provisions of the present Convention no discrimination shall be made as between States.

#### **Article 84. Consultations**

If a dispute between two or more States Parties arises out of the application or interpretation of the present Convention, consultations between them shall be held upon the request of any of them. At the request of any of the parties to the dispute, the Organization or the conference shall be invited to join in the consultations.

**Article 85. Conciliation**

1. If the dispute is not disposed of as a result of the consultations referred to in article 84 within one month from the date of their inception, any State participating in the consultations may bring the dispute before a conciliation commission constituted in accordance with the provisions of this article by giving written notice to the Organization and to the other States participating in the consultations.

2. Each conciliation commission shall be composed of three members: two members who shall be appointed respectively by each of the parties to the dispute, and a Chairman appointed in accordance with paragraph 3 of this article. Each State Party to the present Convention shall designate in advance a person to serve as a member of such a commission. It shall notify the designation to the Organization, which shall maintain a register of persons so designated. If it does not make the designation in advance, it may do so during the conciliation procedure up to the moment at which the Commission begins to draft the report which it is to prepare in accordance with paragraph 7 of this article.

3. The Chairman of the Commission shall be chosen by the other two members. If the other two members are unable to agree within one month from the notice referred to in paragraph 1 of this article or if one of the parties to the dispute has not availed itself of its right to designate a member of the Commission, the Chairman shall be designated at the request of one of the parties to the dispute by the chief administrative officer of the Organization. The appointment shall be made within a period of one month from such request. The chief administrative officer of the Organization shall appoint as the Chairman a qualified jurist who is neither an official of the Organization nor a national of any State party to the dispute.

4. Any vacancy shall be filled in the manner prescribed for the initial appointment.

5. The Commission shall function as soon as the Chairman has been appointed even if its composition is incomplete.

6. The Commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. It may recommend to the Organization, if the Organization is so authorized in accordance with the Charter of the United Nations, to request an advisory opinion from the International Court of Justice regarding the application or interpretation of the present Convention.

7. If the Commission is unable to obtain an agreement among the parties to the dispute on a settlement of the dispute within two months from the appointment of its Chairman, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties to the dispute. The report shall include the Commission's conclusions upon the facts and questions of law and the recommendations which it has submitted to the parties to the dispute in order to facilitate a settlement of the dispute. The two months time limit may be extended by decision of the Commission. The recommendations in the report of the Commission shall not be binding on the parties to the dispute unless all the parties to the dispute have accepted them. Nevertheless, any party to the dispute may declare unilaterally that it will abide by the recommendations in the report so far as it is concerned.

8. Nothing in the preceding paragraphs of this article shall preclude the establishment of any other appropriate procedure for the settlement of disputes arising out of the application or interpretation of the present Convention or the conclusion of any agreement between the parties to the dispute to submit the dispute to a procedure instituted in the Organization or to any other procedure.

9. This article is without prejudice to provisions concerning the settlement of disputes contained in international agreements in force between States or between States and international organizations.

**PART VI. FINAL CLAUSES**

**Article 86. Signature**

The present Convention shall be open for signature by all States until 30 September 1975 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 30 March 1976, at United Nations Headquarters in New York.

**Article 87. Ratification**

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 88. Accession**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 89. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**Article 90. Implementation by organizations**

After the entry into force of the present Convention, the competent organ of an international organization of a universal character may adopt a decision to implement the relevant provisions of the Convention. The Organization shall communicate the decision to the host State and to the depositary of the Convention.

**Article 91. Notifications by the depositary**

1. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States:

- (a) of signatures to the Convention and of the deposit of instruments of ratification or accession, in accordance with articles 86, 87 and 88;
- (b) of the date on which the Convention will enter into force, in accordance with article 89;
- (c) of any decision communicated in accordance with article 90.

2. The Secretary-General of the United Nations shall also inform all States, as necessary, of other acts, notifications or communications relating to the present Convention.

**Article 92. Authentic texts**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this fourteenth day of March, one thousand nine hundred and seventy-five.

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## 18. DRAFT ARTICLES ON THE STATUS OF THE DIPLOMATIC COURIER AND THE DIPLOMATIC BAG NOT ACCOMPANIED BY DIPLOMATIC COURIER AND DRAFT OPTIONAL PROTOCOLS

*Yearbook of the International Law Commission, 1989, vol. II (Part Two).*

### PART I. GENERAL PROVISIONS

#### Article 1. Scope of the present articles

The present articles apply to the diplomatic courier and the diplomatic bag employed for the official communications of a State with its missions, consular posts or delegations, wherever situated, and for the official communications of those missions, consular posts or delegations with the sending State or with each other.

#### Article 2. Couriers and bags not within the scope of the present articles

The fact that the present articles do not apply to couriers and bags employed for the official communications of special missions or international organizations shall not affect:

- (a) the legal status of such couriers and bags;
- (b) the application to such couriers and bags of any rules set forth in the present articles which would be applicable under international law independently of the present articles.

#### Article 3. Use of terms

1. For the purposes of the present articles:

(1) "diplomatic courier" means a person duly authorized by the sending State, either on a regular basis or for a special occasion as a courier *ad hoc*, as:

(a) a diplomatic courier within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) a consular courier within the meaning of the Vienna Convention on Consular Relations of 24 April 1963; or

(c) a courier of a permanent mission, a permanent observer mission, a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975; who is entrusted with the custody, transportation and delivery of the diplomatic bag and is employed for the official communications referred to in article 1;

(2) "diplomatic bag" means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by diplomatic courier or not, which are used for the official communications referred to in article 1 and which bear visible external marks of their character as:

(a) a diplomatic bag within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) a consular bag within the meaning of the Vienna Convention on Consular Relations of 24 April 1963; or

(c) a bag of a permanent mission, a permanent observer mission, a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(3) "sending State" means a State dispatching a diplomatic bag to or from its missions, consular posts or delegations;

(4) “receiving State” means a State having on its territory missions, consular posts or delegations of the sending State which receive or dispatch a diplomatic bag;

(5) “transit State” means a State through whose territory a diplomatic courier or a diplomatic bag passes in transit;

(6) “mission” means:

(a) a permanent diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961; and

(b) a permanent mission or a permanent observer mission within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(7) “consular post” means a consulate-general, consulate, vice-consulate or consular agency within the meaning of the Vienna Convention on Consular Relations of 24 April 1963;

(8) “delegation” means a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(9) “international organization” means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

#### **Article 4. Freedom of official communications**

1. The receiving State shall permit and protect the official communications of the sending State, effected through the diplomatic courier or the diplomatic bag, as referred to in article 1.

2. The transit State shall accord to the official communications of the sending State, effected through the diplomatic courier or the diplomatic bag, the same freedom and protection as is accorded by the receiving State.

#### **Article 5. Duty to respect the laws and regulations of the receiving State and the transit State**

1. The sending State shall ensure that the privileges and immunities accorded to its diplomatic courier and diplomatic bag are not used in a manner incompatible with the object and purpose of the present articles.

2. Without prejudice to the privileges and immunities accorded to him, it is the duty of the diplomatic courier to respect the laws and regulations of the receiving State and the transit State.

#### **Article 6. Non-discrimination and reciprocity**

1. In the application of the provisions of the present articles, the receiving State or the transit State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State or the transit State applies any of the provisions of the present articles restrictively because of a restrictive application of that provision to its diplomatic courier or diplomatic bag by the sending State;

(b) where States by custom or agreement extend to each other more favourable treatment with respect to their diplomatic couriers and diplomatic bags than is required by the present articles.

**PART II. STATUS OF THE DIPLOMATIC COURIER AND THE CAPTAIN OF A SHIP OR AIRCRAFT ENTRUSTED WITH THE DIPLOMATIC BAG****Article 7. Appointment of the diplomatic courier**

Subject to the provisions of articles 9 and 12, the sending State or its missions, consular posts or delegations may freely appoint the diplomatic courier.

**Article 8. Documentation of the diplomatic courier**

The diplomatic courier shall be provided with an official document indicating his status and essential personal data, including his name and, where appropriate, his official position or rank, as well as the number of packages constituting the diplomatic bag which is accompanied by him and their identification and destination.

**Article 9. Nationality of the diplomatic courier**

1. The diplomatic courier should in principle be of the nationality of the sending State.
2. The diplomatic courier may not be appointed from among persons having the nationality of the receiving State except with the consent of that State, which may be withdrawn at any time. However, when the diplomatic courier is performing his functions in the territory of the receiving State, withdrawal of consent shall not take effect until he has delivered the diplomatic bag to its consignee.
3. The receiving State may reserve the right provided for in paragraph 2 also with regard to:
  - (a) nationals of the sending State who are permanent residents of the receiving State;
  - (b) nationals of a third State who are not also nationals of the sending State.

**Article 10. Functions of the diplomatic courier**

The functions of the diplomatic courier consist in taking custody of the diplomatic bag entrusted to him and transporting and delivering it to its consignee.

**Article 11. End of the functions of the diplomatic courier**

The functions of the diplomatic courier come to an end, *inter alia*, upon:

- (a) fulfilment of his functions or his return to the country of origin;
- (b) notification by the sending State to the receiving State and, where necessary, the transit State that his functions have been terminated;
- (c) notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 12, it ceases to recognize him as a diplomatic courier.

**Article 12. The diplomatic courier declared *persona non grata* or not acceptable**

1. The receiving State may, at any time and without having to explain its decision, notify the sending State that the diplomatic courier is *persona non grata* or not acceptable. In any such case, the sending State shall, as appropriate, either recall the diplomatic courier or terminate his functions to be performed in the receiving State. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1, the receiving State may cease to recognize the person concerned as a diplomatic courier.

**Article 13. Facilities accorded to the diplomatic courier**

S1. The receiving State or the transit State shall accord to the diplomatic courier the facilities necessary for the performance of his functions.

2. The receiving State or the transit State shall, upon request and to the extent practicable, assist the diplomatic courier in obtaining temporary accommodation and in establishing contact through the telecommunications network with the sending State and its missions, consular posts or delegations, wherever situated.

#### **Article 14. Entry into the territory of the receiving State or the transit State**

1. The receiving State or the transit State shall permit the diplomatic courier to enter its territory in the performance of his functions.

2. Visas, where required, shall be granted by the receiving State or the transit State to the diplomatic courier as promptly as possible.

#### **Article 15. Freedom of movement**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State or the transit State shall ensure to the diplomatic courier such freedom of movement and travel in its territory as is necessary for the performance of his functions.

#### **Article 16. Personal protection and inviolability**

The diplomatic courier shall be protected by the receiving State or the transit State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

#### **Article 17. Inviolability of temporary accommodation**

1. The temporary accommodation of the diplomatic courier carrying a diplomatic bag shall, in principle, be inviolable. However:

(a) prompt protective action may be taken if required in case of fire or other disaster;

(b) inspection or search may be undertaken where serious grounds exist for believing that there are in the temporary accommodation articles the possession, import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or the transit State.

2. In the case referred to in paragraph 1 (a), measures necessary for the protection of the diplomatic bag and its inviolability shall be taken.

3. In the case referred to in paragraph 1 (b), inspection or search shall be conducted in the presence of the diplomatic courier and on condition that it be effected without infringing the inviolability either of the person of the diplomatic courier or of the diplomatic bag and would not unduly delay or impede the delivery of the diplomatic bag. The diplomatic courier shall be given the opportunity to communicate with his mission in order to invite a member of that mission to be present when the inspection or search takes place.

4. The diplomatic courier shall, to the extent practicable, inform the authorities of the receiving State or the transit State of the location of his temporary accommodation.

#### **Article 18. Immunity from jurisdiction**

1. The diplomatic courier shall enjoy immunity from the criminal jurisdiction of the receiving State or the transit State in respect of acts performed in the exercise of his functions.

2. He shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State or the transit State in respect of acts performed in the exercise of his functions. This immunity shall not extend to an action for damages arising from an accident involving a vehicle the use of which may have entailed the liability of the courier to the extent that those damages are not recoverable from insurance. Pursuant to the laws and regulations of the receiving State or the transit State,

the courier shall, when driving a motor vehicle, be required to have insurance coverage against third-party risks.

3. No measures of execution may be taken in respect of the diplomatic courier, except in cases where he does not enjoy immunity under paragraph 2 and provided that the measures concerned can be taken without infringing the inviolability of his person, his temporary accommodation or the diplomatic bag entrusted to him.

4. The diplomatic courier is not obliged to give evidence as a witness on matters connected with the exercise of his functions. He may, however, be required to give evidence on other matters, provided that this would not unduly delay or impede the delivery of the diplomatic bag.

5. The immunity of the diplomatic courier from the jurisdiction of the receiving State or the transit State does not exempt him from the jurisdiction of the sending State.

#### **Article 19. Exemption from customs duties, dues and taxes**

1. The receiving State or the transit State shall, in accordance with such laws and regulations as it may adopt, permit entry of articles for the personal use of the diplomatic courier carried in his personal baggage and grant exemption from all customs duties, taxes and related charges on such articles other than charges levied for specific services rendered.

2. The diplomatic courier shall, in the performance of his functions, be exempt in the receiving State or the transit State from all dues and taxes, national, regional or municipal, except for indirect taxes of a kind which are normally incorporated in the price of goods or services and charges levied for specific services rendered.

#### **Article 20. Exemption from examination and inspection**

1. The diplomatic courier shall be exempt from personal examination.

2. The personal baggage of the diplomatic courier shall be exempt from inspection, unless there are serious grounds for believing that it contains articles not for the personal use of the diplomatic courier or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or the transit State. An inspection in such a case shall be conducted in the presence of the diplomatic courier.

#### **Article 21. Beginning and end of privileges and immunities**

1. The diplomatic courier shall enjoy privileges and immunities from the moment he enters the territory of the receiving State or the transit State in order to perform his functions, or, if he is already in the territory of the receiving State, from the moment he begins to exercise his functions.

2. The privileges and immunities of the diplomatic courier shall cease at the moment when he leaves the territory of the receiving State or the transit State, or on the expiry of a reasonable period in which to do so. However, the privileges and immunities of the diplomatic courier *ad hoc* who is a resident of the receiving State shall cease at the moment when he has delivered to the consignee the diplomatic bag in his charge.

3. Notwithstanding paragraph 2, immunity shall continue to subsist with respect to acts performed by the diplomatic courier in the exercise of his functions.

#### **Article 22. Waiver of immunities**

1. The sending State may waive the immunities of the diplomatic courier.

2. The waiver shall, in all cases, be express and shall be communicated in writing to the receiving State or the transit State.

3. However, the initiation of proceedings by the diplomatic courier shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction in respect of judicial proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement or decision, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of the diplomatic courier in respect of a civil action, it shall use its best endeavours to bring about an equitable settlement of the case.

**Article 23. Status of the captain of a ship or aircraft entrusted with the diplomatic bag**

1. The captain of a ship or aircraft in commercial service which is scheduled to arrive at an authorized port of entry may be entrusted with the diplomatic bag.

2. The captain shall be provided with an official document indicating the number of packages constituting the bag entrusted to him, but he shall not be considered to be a diplomatic courier.

3. The receiving State shall permit a member of a mission, consular post or delegation of the sending State to have unimpeded access to the ship or aircraft in order to take possession of the bag directly and freely from the captain or to deliver the bag directly and freely to him.

**PART III. STATUS OF THE DIPLOMATIC BAG**

**Article 24. Identification of the diplomatic bag**

1. The packages constituting the diplomatic bag shall bear visible external marks of their character.

2. The packages constituting the diplomatic bag, if not accompanied by a diplomatic courier, shall also bear visible indications of their destination and consignee.

**Article 25. Contents of the diplomatic bag**

1. The diplomatic bag may contain only official correspondence, and documents or articles intended exclusively for official use.

2. The sending State shall take appropriate measures to prevent the dispatch through its diplomatic bag of items other than those referred to in paragraph 1.

**Article 26. Transmission of the diplomatic bag by postal service or any mode of transport**

The conditions governing the use of the postal service or of any mode of transport, established by the relevant international or national rules, shall apply to the transmission of the packages constituting the diplomatic bag in such a manner as to ensure the best possible facilities for the dispatch of the bag.

**Article 27. Safe and rapid dispatch of the diplomatic bag**

The receiving State or the transit State shall facilitate the safe and rapid dispatch of the diplomatic bag and shall, in particular, ensure that such dispatch is not unduly delayed or impeded by formal or technical requirements.

**Article 28. Protection of the diplomatic bag**

1. The diplomatic bag shall be inviolable wherever it may be; it shall not be opened or detained and shall be exempt from examination directly or through electronic or other technical devices.

2. Nevertheless, if the competent authorities of the receiving State or the transit State have serious reason to believe that the consular bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may request that the bag

be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

#### **Article 29. Exemption from customs duties and taxes**

The receiving State or the transit State shall, in accordance with such laws and regulations as it may adopt, permit the entry, transit and departure of the diplomatic bag and grant exemption from customs duties, taxes and related charges other than charges for storage, cartage and similar services rendered.

### **PART IV. MISCELLANEOUS PROVISIONS**

#### **Article 30. Protective measures in case of force majeure or other exceptional circumstances**

1. Where, because of reasons of *force majeure* or other exceptional circumstances, the diplomatic courier, or the captain of a ship or aircraft in commercial service to whom the diplomatic bag has been entrusted, or any other member of the crew, is no longer able to maintain custody of the bag, the receiving State or the transit State shall inform the sending State of the situation and take appropriate measures with a view to ensuring the integrity and safety of the bag until the authorities of the sending State recover possession of it.

2. Where, because of reasons of *force majeure* or other exceptional circumstances, the diplomatic courier or the unaccompanied diplomatic bag is present in the territory of a State not initially foreseen as a transit State, that State, where aware of the situation, shall accord to the courier and the bag the protection provided for under the present articles and, in particular, extend facilities for their prompt and safe departure from its territory.

#### **Article 31. Non-recognition of States or Governments or absence of diplomatic or consular relations**

The State on whose territory an international organization has its seat or an office or a meeting of an international organ or a conference is held shall grant the facilities, privileges and immunities accorded under the present articles to the diplomatic courier and the diplomatic bag of a sending State directed to or from its mission or delegation, notwithstanding the non-recognition of one of those States or its Government by the other State or the non-existence of diplomatic or consular relations between them.

#### **Article 32. Relationship between the present articles and other conventions and agreements**

1. The present articles shall, as between Parties to them and to the conventions listed in subparagraph (1) of paragraph 1 of article 3, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in those conventions.

2. The provisions of the present articles are without prejudice to other international agreements in force as between Parties to them.

3. Nothing in the present articles shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the present articles and do not affect the enjoyment by the other Parties to the present articles of their rights or the performance of their obligations under the present articles.

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**DRAFT OPTIONAL PROTOCOL ONE ON THE STATUS OF THE COURIER  
AND THE BAG OF SPECIAL MISSIONS**

The States Parties to the present Protocol and to the articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, hereinafter referred to as “the articles,”

Have agreed as follows:

**Article I**

The articles also apply to a courier and a bag employed for the official communications of a State with its special missions within the meaning of the Convention on Special Missions of 8 December 1969, wherever situated, and for the official communications of those missions with the sending State or with its other missions, consular posts or delegations.

**Article II**

For the purposes of the articles:

(a) “mission” also means a special mission within the meaning of the Convention on Special Missions of 8 December 1969;

(b) “diplomatic courier” also means a person duly authorized by the sending State as a courier of a special mission within the meaning of the Convention on Special Missions of 8 December 1969 who is entrusted with the custody, transportation and delivery of a diplomatic bag and is employed for the official communications referred to in article I of the present Protocol;

(c) “diplomatic bag” also means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by a courier or not, which are used for the official communications referred to in article I of the present Protocol and which bear visible external marks of their character as a bag of a special mission within the meaning of the Convention on Special Missions of 8 December 1969.

**Article III**

1. The present Protocol shall, as between Parties to it and to the Convention on Special Missions of 8 December 1969, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in that Convention.

2. The provisions of the present Protocol are without prejudice to other international agreements in force as between parties to them.

3. Nothing in the present Protocol shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the articles and do not affect the enjoyment by the other Parties to the articles of their rights or the performance of their obligations under the articles.

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**DRAFT OPTIONAL PROTOCOL TWO ON THE STATUS OF THE COURIER AND THE BAG OF  
INTERNATIONAL ORGANIZATIONS OF A UNIVERSAL CHARACTER**

The States Parties to the present Protocol and to the articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, hereinafter referred to as “the articles,”

Have agreed as follows:

**Article I**

The articles also apply to a courier and a bag employed for the official communications of an international organization of a universal character:

- (a) with its missions and offices, wherever situated, and for the official communications of those missions and offices with each other;
- (b) with other international organizations of a universal character.

**Article II**

For the purposes of the articles:

- (a) “diplomatic courier” also means a person duly authorized by the international organization as a courier who is entrusted with the custody, transportation and delivery of the bag and is employed for the official communications referred to in article I of the present Protocol;
- (b) “diplomatic bag” also means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by a courier or not, which are used for the official communications referred to in article I of the present Protocol and which bear visible external marks of their character as a bag of an international organization.

**Article III**

1. The present Protocol shall, as between Parties to it and to the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 or the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in those Conventions.

2. The provisions of the present Protocol are without prejudice to other international agreements in force as between parties to them.

3. Nothing in the present Protocol shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the articles and do not affect the enjoyment by the other Parties to the articles of their rights or the performance of their obligations under the articles.

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## **Chapter V**

### **INTERNATIONAL RESPONSIBILITY**



## 19. CONVENTION ON INTERNATIONAL LIABILITY FOR DAMAGE CAUSED BY SPACE OBJECTS

Done at London, Moscow and Washington on 29 March 1972

Entry into force: 1 September 1972

United Nations, *Treaty Series*, vol. 961, p. 187; Reg. No. 13810

The States Parties to this Convention,

Recognising the common interest of all mankind in furthering the exploration and use of outer space for peaceful purposes,

Recalling the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,

Taking into consideration that, notwithstanding the precautionary measures to be taken by States and international intergovernmental organisations involved in the launching of space objects, damage may on occasion be caused by such objects,

Recognizing the need to elaborate effective international rules and procedures concerning liability for damage caused by space objects and to ensure, in particular, the prompt payment under the terms of this Convention of a full and equitable measure of compensation to victims of such damage,

Believing that the establishment of such rules and procedures will contribute to the strengthening of international co-operation in the field of the exploration and use of outer space for peaceful purposes,

Have agreed on the following:

### Article I

For the purposes of this Convention:

(a) The term “damage” means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organisations;

(b) The term “launching” includes attempted launching;

(c) The term “launching State” means:

(i) a state which launches or procures the launching of a space object;

(ii) a State from whose territory or facility a space object is launched;

(d) The term “space object” includes component parts of a space object as well as its launch vehicle and parts thereof.

### Article II

A launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft in flight.

### Article III

In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible.

### Article IV

1. In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object

of another launching State, and of damage thereby being caused to a third State or to its natural or juridical persons, the first two States shall be jointly and severally liable to the third State, to the extent indicated by the following:

(a) If the damage has been caused to the third State on the surface of the earth or to aircraft in flight, their liability to the third State shall be absolute;

(b) If the damage has been caused to a space object of the third State or to persons or property on board that space object elsewhere than on the surface of the earth, their liability to the third State shall be based on the fault of either of the first two States or on the fault of persons for whom either is responsible.

2. In all cases of joint and several liability referred to in paragraph 1 of this Article, the burden of compensation for the damage shall be apportioned between the first two States in accordance with the extent to which they were at fault; if the extent of the fault of each of these States cannot be established, the burden of compensation shall be apportioned equally between them. Such apportionment shall be without prejudice to the right of the third State to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.

#### **Article V**

1. Whenever two or more States jointly launch a space object, they shall be jointly and severally liable for any damage caused.

2. A launching State which has paid compensation for damage shall have the right to present a claim for indemnification to other participants in the joint launching. The participants in a joint launching may conclude agreements regarding the apportioning among themselves of the financial obligation in respect of which they are jointly and severally liable. Such agreements shall be without prejudice to the right of a State sustaining damage to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.

3. A State from whose territory or facility a space object is launched shall be regarded as a participant in a joint launching.

#### **Article VI**

1. Subject to the provisions of paragraph 2 of this Article, exoneration from absolute liability shall be granted to the extent that a launching State establishes that the damage has resulted either wholly or partially from gross negligence or from an act or omission done with intent to cause damage on the part of a claimant State or of natural or juridical persons it represents.

2. No exoneration whatever shall be granted in cases where the damage has resulted from activities conducted by a launching State which are not in conformity with international law including, in particular, the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

#### **Article VII**

The provisions of this Convention shall not apply to damage caused by a space object of a launching State to:

(a) nationals of that launching State;

(b) foreign nationals during such time as they are participating in the operation of that space object from the time of its launching or at any stage thereafter until its descent, or during such time as they are in the immediate vicinity of a planned launching or recovery area as the result of an invitation by that launching State.

**Article VIII**

1. A State which suffers damage, or whose natural or juridical persons suffer damage, may present to a launching State a claim for compensation for such damage.
2. If the State of nationality has not presented a claim, another State may, in respect of damage sustained in its territory by any natural or juridical person, present a claim to a launching State.
3. If neither the State of nationality nor the State in whose territory the damage was sustained has presented a claim or notified its intention of presenting a claim, another State may, in respect of damage sustained by its permanent residents, present a claim to a launching State.

**Article IX**

A claim for compensation for damage shall be presented to a launching State through diplomatic channels. If a State does not maintain diplomatic relations with the launching State concerned, it may request another State to present its claim to that launching State or otherwise represent its interests under this Convention. It may also present its claim through the Secretary-General of the United Nations, provided the claimant State and the launching State are both Members of the United Nations.

**Article X**

1. A claim for compensation for damage may be presented to a launching State not later than one year following the date of the occurrence of the damage or the identification of the launching State which is liable.
2. If, however, a State does not know of the occurrence of the damage or has not been able to identify the launching State which is liable, it may present a claim within one year following the date on which it learned of the aforementioned facts; however, this period shall in no event exceed one year following the date on which the State could reasonably be expected to have learned of the facts through the exercise of due diligence.
3. The time-limits specified in paragraphs 1 and 2 of this Article shall apply even if the full extent of the damage may not be known. In this event, however, the claimant State shall be entitled to revise the claim and submit additional documentation after the expiration of such time-limits until one year after the full extent of the damage is known.

**Article XI**

1. Presentation of a claim to a launching State for compensation for damage under this Convention shall not require the prior exhaustion of any local remedies which may be available to a claimant State or to natural or juridical persons it represents.
2. Nothing in this Convention shall prevent a State, or natural or juridical persons it might represent, from pursuing a claim in the courts or administrative tribunals or agencies of a launching State. A State shall not, however, be entitled to present a claim under this Convention in respect of the same damage for which a claim is being pursued in the courts or administrative tribunals or agencies of a launching State or under another international agreement which is binding on the States concerned.

**Article XII**

The compensation which the launching State shall be liable to pay for damage under this Convention shall be determined in accordance with international law and the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, State or international organisation on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred.

**Article XIII**

Unless the claimant State and the State from which compensation is due under this Convention agree on another form of compensation, the compensation shall be paid in the currency of the claimant State or, if that State so requests, in the currency of the State from which compensation is due.

**Article XIV**

If no settlement of a claim is arrived at through diplomatic negotiations as provided for in Article IX, within one year from the date on which the claimant State notifies the launching State that it has submitted the documentation of its claim, the parties concerned shall establish a Claims Commission at the request of either party.

**Article XV**

1. The Claims Commission shall be composed of three members: one appointed by the claimant State, one appointed by the launching State and the third member, the Chairman, to be chosen by both parties jointly. Each party shall make its appointment within two months of the request for the establishment of the Claims Commission.

2. If no agreement is reached on the choice of the Chairman within four months of the request for the establishment of the Commission, either party may request the Secretary-General of the United Nations to appoint the Chairman within a further period of two months.

**Article XVI**

1. If one of the parties does not make its appointment within the stipulated period, the Chairman shall, at the request of the other party, constitute a single-member Claims Commission.

2. Any vacancy which may arise in the Commission for whatever reason shall be filled by the same procedure adopted for the original appointment.

3. The Commission shall determine its own procedure.

4. The Commission shall determine the place or places where it shall sit and all other administrative matters.

5. Except in the case of decisions and awards by a single-member Commission, all decisions and awards of the Commission shall be by majority vote.

**Article XVII**

No increase in the membership of the Claims Commission shall take place by reason of two or more claimant States or launching States being joined in any one proceeding before the Commission. The claimant States so joined shall collectively appoint one member of the Commission in the same manner and subject to the same conditions as would be the case for a single claimant State. When two or more launching States are so joined, they shall collectively appoint one member of the Commission in the same way. If the claimant States or the launching States do not make the appointment within the stipulated period, the Chairman shall constitute a single-member Commission.

**Article XVIII**

The Claims Commission shall decide the merits of the claim for compensation and determine the amount of compensation payable, if any.

**Article XIX**

1. The Claims Commission shall act in accordance with the provisions of Article XII.

2. The decision of the Commission shall be final and binding if the parties have so agreed; otherwise the Commission shall render a final and recommendatory award, which the parties shall consider in good faith. The Commission shall state the reasons for its decision or award.

3. The Commission shall give its decision or award as promptly as possible and no later than one year from the date of its establishment, unless an extension of this period is found necessary by the Commission.

4. The Commission shall make its decision or award public. It shall deliver a certified copy of its decision or award to each of the parties and to the Secretary-General of the United Nations.

#### **Article XX**

The expenses in regard to the Claims Commission shall be borne equally by the parties, unless otherwise decided by the Commission.

#### **Article XXI**

If the damage caused by a space object presents a large-scale danger to human life or seriously interferes with the living conditions of the population or the functioning of vital centres, the States Parties, and in particular the launching State, shall examine the possibility of rendering appropriate and rapid assistance to the State which has suffered the damage, when it so requests. However, nothing in this Article shall affect the rights or obligations of the States Parties under this Convention.

#### **Article XXII**

1. In this Convention, with the exception of Articles XXIV to XXVII, references to States shall be deemed to apply to any international intergovernmental organisation which conducts space activities if the organisation declares its acceptance of the rights and obligations provided for in this Convention and if a majority of the States members of the organisation are State Parties to this Convention and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

2. States members of any such organisation which are States Parties to this Convention shall take all appropriate steps to ensure that the organisation makes a declaration in accordance with the preceding paragraph.

3. If an international intergovernmental organisation is liable for damage by virtue of the provisions of this Convention, that organisation and those of its members which are States Parties to this Convention shall be jointly and severally liable; provided, however, that:

(a) any claim for compensation in respect of such damage shall be first presented to the organisation;

(b) only where the organisation has not paid, within a period of six months, any sum agreed or determined to be due as compensation for such damage, may the claimant State invoke the liability of the members which are States Parties to this Convention for the payment of that sum.

4. Any claim, pursuant to the provisions of this Convention, for compensation in respect of damage caused to an organisation which has made a declaration in accordance with paragraph 1 of this Article shall be presented by a State member of the organisation which is a State Party to this Convention.

#### **Article XXIII**

1. The provisions of this Convention shall not affect other international agreements in force in so far as relations between the States Parties to such agreements are concerned.

2. No provision of this Convention shall prevent States from concluding international agreements reaffirming, supplementing or extending its provisions.

#### **Article XXIV**

1. This Convention shall be open to all States for signature. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force on the deposit of the fifth instrument of ratification.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Convention, the date of its entry into force and other notices.

6. This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

#### **Article XXV**

Any State Party to this Convention may propose amendments to this Convention. Amendments shall enter into force for each State Party to the Convention accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

#### **Article XXVI**

Ten years after the entry into force of this Convention, the question of the review of this Convention shall be included in the provisional agenda of the United Nations General Assembly in order to consider, in the light of past application of the Convention, whether it requires revision. However, at any time after the Convention has been in force for five years, and at the request of one third of the States Parties to the Convention, and with the concurrence of the majority of the States Parties, a conference of the States Parties shall be convened to review this Convention.

#### **Article XXVII**

Any State Party to this Convention may give notice of its withdrawal from the Convention one year after its entry into force by written notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification.

#### **Article XXVIII**

This Convention, of which the English, Russian, French, Spanish and Chinese texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

In witness whereof the undersigned, duly authorised thereto, have signed this Convention.

Done in triplicate, at the cities of London, Moscow and Washington, this twenty-ninth day of March, one thousand nine hundred and seventy-two.

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## 20. ARTICLES ON THE RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS

General Assembly resolution 56/83 of 12 December 2001, annex

### PART ONE. THE INTERNATIONALLY WRONGFUL ACT OF A STATE

#### CHAPTER I. GENERAL PRINCIPLES

##### Article 1. Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

##### Article 2. Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.

##### Article 3. Characterization of an act of a State as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

#### CHAPTER II. ATTRIBUTION OF CONDUCT TO A STATE

##### Article 4. Conduct of organs of a State

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

##### Article 5. Conduct of persons or entities exercising elements of governmental authority

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.

##### Article 6. Conduct of organs placed at the disposal of a State by another State

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

##### Article 7. Excess of authority or contravention of instructions

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

**Article 8. Conduct directed or controlled by a State**

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

**Article 9. Conduct carried out in the absence or default of the official authorities**

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

**Article 10. Conduct of an insurrectional or other movement**

1. The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law.

2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.

3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles 4 to 9.

**Article 11. Conduct acknowledged and adopted by a State as its own**

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

**CHAPTER III. BREACH OF AN INTERNATIONAL OBLIGATION****Article 12. Existence of a breach of an international obligation**

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

**Article 13. International obligation in force for a State**

An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

**Article 14. Extension in time of the breach of an international obligation**

1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

**Article 15. Breach consisting of a composite act**

1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

#### **CHAPTER IV. RESPONSIBILITY OF A STATE IN CONNECTION WITH THE ACT OF ANOTHER STATE**

##### **Article 16. Aid or assistance in the commission of an internationally wrongful act**

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

##### **Article 17. Direction and control exercised over the commission of an internationally wrongful act**

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

##### **Article 18. Coercion of another State**

A State which coerces another State to commit an act is internationally responsible for that act if:

- (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and
- (b) the coercing State does so with knowledge of the circumstances of the act.

##### **Article 19. Effect of this chapter**

This chapter is without prejudice to the international responsibility, under other provisions of these articles, of the State which commits the act in question, or of any other State.

#### **CHAPTER V. CIRCUMSTANCES PRECLUDING WRONGFULNESS**

##### **Article 20. Consent**

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

##### **Article 21. Self-defence**

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

##### **Article 22. Countermeasures in respect of an internationally wrongful act**

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of part three.

**Article 23. Force majeure**

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to *force majeure*, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(a) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the State invoking it; or

(b) the State has assumed the risk of that situation occurring.

**Article 24. Distress**

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(a) the situation of distress is due, either alone or in combination with other factors, to the conduct of the State invoking it; or

(b) the act in question is likely to create a comparable or greater peril.

**Article 25. Necessity**

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

(a) Is the only way for the State to safeguard an essential interest against a grave and imminent peril; and

(b) Does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

(a) the international obligation in question excludes the possibility of invoking necessity; or

(b) the State has contributed to the situation of necessity.

**Article 26. Compliance with peremptory norms**

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

**Article 27. Consequences of invoking a circumstance precluding wrongfulness**

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:

(a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(b) the question of compensation for any material loss caused by the act in question.

**PART TWO. CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE****CHAPTER I. GENERAL PRINCIPLES****Article 28. Legal consequences of an internationally wrongful act**

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of part one involves legal consequences as set out in this part.

**Article 29. Continued duty of performance**

The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached.

**Article 30. Cessation and non-repetition**

The State responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act, if it is continuing;
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

**Article 31. Reparation**

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

**Article 32. Irrelevance of internal law**

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part.

**Article 33. Scope of international obligations set out in this part**

1. The obligations of the responsible State set out in this part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

**CHAPTER II. REPARATION FOR INJURY****Article 34. Forms of reparation**

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

**Article 35. Restitution**

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;
- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

**Article 36. Compensation**

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

**Article 37. Satisfaction**

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.
2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.
3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

**Article 38. Interest**

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

**Article 39. Contribution to the injury**

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

**CHAPTER III. SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW****Article 40. Application of this chapter**

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

**Article 41. Particular consequences of a serious breach of an obligation under this chapter**

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.
3. This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international law.

**PART THREE. THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF A STATE****CHAPTER I. INVOCATION OF THE RESPONSIBILITY OF A STATE****Article 42. Invocation of responsibility by an injured State**

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

- (a) that State individually; or
- (b) a group of States including that State, or the international community as a whole, and the breach of the obligation:
  - (i) specially affects that State; or
  - (ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

**Article 43. Notice of claim by an injured State**

1. An injured State which invokes the responsibility of another State shall give notice of its claim to that State.

2. The injured State may specify in particular:

- (a) the conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;
- (b) what form reparation should take in accordance with the provisions of part two.

**Article 44. Admissibility of claims**

The responsibility of a State may not be invoked if:

- (a) the claim is not brought in accordance with any applicable rule relating to the nationality of claims;
- (b) the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

**Article 45. Loss of the right to invoke responsibility**

The responsibility of a State may not be invoked if:

- (a) the injured State has validly waived the claim;
- (b) the injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

**Article 46. Plurality of injured States**

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.

**Article 47. Plurality of responsible States**

1. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.

2. Paragraph 1:

- (a) does not permit any injured State to recover, by way of compensation, more than the damage it has suffered;
- (b) is without prejudice to any right of recourse against the other responsible States.

**Article 48. Invocation of responsibility by a State other than an injured State**

1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:

- (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
- (b) the obligation breached is owed to the international community as a whole.

2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:

- (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
- (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

3. The requirements for the invocation of responsibility by an injured State under articles 43, 44 and 45 apply to an invocation of responsibility by a State entitled to do so under paragraph 1.

**CHAPTER II. COUNTERMEASURES**

**Article 49. Object and limits of countermeasures**

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

**Article 50. Obligations not affected by countermeasures**

1. Countermeasures shall not affect:

- (a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;
- (b) obligations for the protection of fundamental human rights;
- (c) obligations of a humanitarian character prohibiting reprisals;
- (d) other obligations under peremptory norms of general international law.

2. A State taking countermeasures is not relieved from fulfilling its obligations:

- (a) under any dispute settlement procedure applicable between it and the responsible State;
- (b) to respect the inviolability of diplomatic or consular agents, premises, archives and documents.

**Article 51. Proportionality**

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

**Article 52. Conditions relating to resort to countermeasures**

1. Before taking countermeasures, an injured State shall:

- (a) call upon the responsible State, in accordance with article 43, to fulfil its obligations under part two;

(b) notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.

2. Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(a) the internationally wrongful act has ceased; and

(b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

#### **Article 53. Termination of countermeasures**

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under part two in relation to the internationally wrongful act.

#### **Article 54. Measures taken by States other than an injured State**

This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

### **PART FOUR. GENERAL PROVISIONS**

#### **Article 55. *Lex specialis***

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

#### **Article 56. Questions of State responsibility not regulated by these articles**

The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.

#### **Article 57. Responsibility of an international organization**

These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

#### **Article 58. Individual responsibility**

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.

#### **Article 59. Charter of the United Nations**

These articles are without prejudice to the Charter of the United Nations.

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## **21. ARTICLES ON DIPLOMATIC PROTECTION**

General Assembly resolution 62/67 of 4 December 2007, annex

### **PART ONE. GENERAL PROVISIONS**

#### **Article 1. Definition and scope**

For the purposes of the present draft articles, diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.

#### **Article 2. Right to exercise diplomatic protection**

A State has the right to exercise diplomatic protection in accordance with the present draft articles.

### **PART TWO. NATIONALITY**

#### **CHAPTER I. GENERAL PRINCIPLES**

##### **Article 3. Protection by the State of nationality**

1. The State entitled to exercise diplomatic protection is the State of nationality.
2. Notwithstanding paragraph 1, diplomatic protection may be exercised by a State in respect of a person that is not its national in accordance with draft article 8.

#### **CHAPTER II. NATURAL PERSONS**

##### **Article 4. State of nationality of a natural person**

For the purposes of the diplomatic protection of a natural person, a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalization, succession of States or in any other manner, not inconsistent with international law.

##### **Article 5. Continuous nationality of a natural person**

1. A State is entitled to exercise diplomatic protection in respect of a person who was a national of that State continuously from the date of injury to the date of the official presentation of the claim. Continuity is presumed if that nationality existed at both these dates.
2. Notwithstanding paragraph 1, a State may exercise diplomatic protection in respect of a person who is its national at the date of the official presentation of the claim but was not a national at the date of injury, provided that the person had the nationality of a predecessor State or lost his or her previous nationality and acquired, for a reason unrelated to the bringing of the claim, the nationality of the former State in a manner not inconsistent with international law.
3. Diplomatic protection shall not be exercised by the present State of nationality in respect of a person against a former State of nationality of that person for an injury caused when that person was a national of the former State of nationality and not of the present State of nationality.
4. A State is no longer entitled to exercise diplomatic protection in respect of a person who acquires the nationality of the State against which the claim is brought after the date of the official presentation of the claim.

**Article 6. Multiple nationality and claim against a third State**

1. Any State of which a dual or multiple national is a national may exercise diplomatic protection in respect of that national against a State of which that person is not a national.
2. Two or more States of nationality may jointly exercise diplomatic protection in respect of a dual or multiple national.

**Article 7. Multiple nationality and claim against a State of nationality**

A State of nationality may not exercise diplomatic protection in respect of a person against a State of which that person is also a national unless the nationality of the former State is predominant, both at the date of injury and at the date of the official presentation of the claim.

**Article 8. Stateless persons and refugees**

1. A State may exercise diplomatic protection in respect of a stateless person who, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State.
2. A State may exercise diplomatic protection in respect of a person who is recognized as a refugee by that State, in accordance with internationally accepted standards, when that person, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State.
3. Paragraph 2 does not apply in respect of an injury caused by an internationally wrongful act of the State of nationality of the refugee.

**CHAPTER III. LEGAL PERSONS****Article 9. State of nationality of a corporation**

For the purposes of the diplomatic protection of a corporation, the State of nationality means the State under whose law the corporation was incorporated. However, when the corporation is controlled by nationals of another State or States and has no substantial business activities in the State of incorporation, and the seat of management and the financial control of the corporation are both located in another State, that State shall be regarded as the State of nationality.

**Article 10. Continuous nationality of a corporation**

1. A State is entitled to exercise diplomatic protection in respect of a corporation that was a national of that State, or its predecessor State, continuously from the date of injury to the date of the official presentation of the claim. Continuity is presumed if that nationality existed at both these dates.
2. A State is no longer entitled to exercise diplomatic protection in respect of a corporation that acquires the nationality of the State against which the claim is brought after the presentation of the claim.
3. Notwithstanding paragraph 1, a State continues to be entitled to exercise diplomatic protection in respect of a corporation which was its national at the date of injury and which, as the result of the injury, has ceased to exist according to the law of the State of incorporation.

**Article 11. Protection of shareholders**

A State of nationality of shareholders in a corporation shall not be entitled to exercise diplomatic protection in respect of such shareholders in the case of an injury to the corporation unless:

- (a) the corporation has ceased to exist according to the law of the State of incorporation for a reason unrelated to the injury; or

(b) the corporation had, at the date of injury, the nationality of the State alleged to be responsible for causing the injury, and incorporation in that State was required by it as a precondition for doing business there.

#### **Article 12. Direct injury to shareholders**

To the extent that an internationally wrongful act of a State causes direct injury to the rights of shareholders as such, as distinct from those of the corporation itself, the State of nationality of any such shareholders is entitled to exercise diplomatic protection in respect of its nationals.

#### **Article 13. Other legal persons**

The principles contained in this chapter shall be applicable, as appropriate, to the diplomatic protection of legal persons other than corporations.

### **PART THREE. LOCAL REMEDIES**

#### **Article 14. Exhaustion of local remedies**

1. A State may not present an international claim in respect of an injury to a national or other person referred to in draft article 8 before the injured person has, subject to draft article 15, exhausted all local remedies.

2. "Local remedies" means legal remedies which are open to an injured person before the judicial or administrative courts or bodies, whether ordinary or special, of the State alleged to be responsible for causing the injury.

3. Local remedies shall be exhausted where an international claim, or request for a declaratory judgement related to the claim, is brought preponderantly on the basis of an injury to a national or other person referred to in draft article 8.

#### **Article 15. Exceptions to the local remedies rule**

Local remedies do not need to be exhausted where:

(a) there are no reasonably available local remedies to provide effective redress, or the local remedies provide no reasonable possibility of such redress;

(b) there is undue delay in the remedial process which is attributable to the State alleged to be responsible;

(c) there was no relevant connection between the injured person and the State alleged to be responsible at the date of injury;

(d) the injured person is manifestly precluded from pursuing local remedies; or

(e) the State alleged to be responsible has waived the requirement that local remedies be exhausted.

### **PART FOUR. MISCELLANEOUS PROVISIONS**

#### **Article 16. Actions or procedures other than diplomatic protection**

The rights of States, natural persons, legal persons or other entities to resort under international law to actions or procedures other than diplomatic protection to secure redress for injury suffered as a result of an internationally wrongful act, are not affected by the present draft articles.

#### **Article 17. Special rules of international law**

The present draft articles do not apply to the extent that they are inconsistent with special rules of international law, such as treaty provisions for the protection of investments.

**Article 18. Protection of ships' crews**

The right of the State of nationality of the members of the crew of a ship to exercise diplomatic protection is not affected by the right of the State of nationality of a ship to seek redress on behalf of such crew members, irrespective of their nationality, when they have been injured in connection with an injury to the vessel resulting from an internationally wrongful act.

**Article 19. Recommended practice**

A State entitled to exercise diplomatic protection according to the present draft articles, should:

(a) give due consideration to the possibility of exercising diplomatic protection, especially when a significant injury has occurred;

(b) take into account, wherever feasible, the views of injured persons with regard to resort to diplomatic protection and the reparation to be sought; and

(c) transfer to the injured person any compensation obtained for the injury from the responsible State subject to any reasonable deductions.

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**22. ARTICLES ON THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS**

General Assembly resolution 66/100 of 9 December 2011, annex

**PART ONE. INTRODUCTION****Article 1. Scope of the present articles**

1. The present articles apply to the international responsibility of an international organization for an internationally wrongful act.

2. The present articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

**Article 2. Use of terms**

For the purposes of the present articles,

(a) "international organization" means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities;

(b) "rules of the organization" means, in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization;

(c) "organ of an international organization" means any person or entity which has that status in accordance with the rules of the organization;

(d) "agent of an international organization" means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts.

**PART TWO. THE INTERNATIONALLY WRONGFUL ACT OF  
AN INTERNATIONAL ORGANIZATION**

**CHAPTER I. GENERAL PRINCIPLES**

**Article 3. Responsibility of an international organization for  
its internationally wrongful acts**

Every internationally wrongful act of an international organization entails the international responsibility of that organization.

**Article 4. Elements of an internationally wrongful act of an international organization**

There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

- (a) is attributable to that organization under international law; and
- (b) constitutes a breach of an international obligation of that organization.

**Article 5. Characterization of an act of an international organization  
as internationally wrongful**

The characterization of an act of an international organization as internationally wrongful is governed by international law.

**CHAPTER II. ATTRIBUTION OF CONDUCT TO AN INTERNATIONAL ORGANIZATION**

**Article 6. Conduct of organs or agents of an international organization**

1. The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.

2. The rules of the organization apply in the determination of the functions of its organs and agents.

**Article 7. Conduct of organs of a State or organs or agents of an international organization  
placed at the disposal of another international organization**

The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

**Article 8. Excess of authority or contravention of instructions**

The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.

**Article 9. Conduct acknowledged and adopted by an international organization as its own**

Conduct which is not attributable to an international organization under articles 6 to 8 shall nevertheless be considered an act of that organization under international law if and to the extent that the organization acknowledges and adopts the conduct in question as its own.

**CHAPTER III. BREACH OF AN INTERNATIONAL OBLIGATION****Article 10. Existence of a breach of an international obligation**

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.

2. Paragraph 1 includes the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization.

**Article 11. International obligation in force for an international organization**

An act of an international organization does not constitute a breach of an international obligation unless the organization is bound by the obligation in question at the time the act occurs.

**Article 12. Extension in time of the breach of an international obligation**

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

**Article 13. Breach consisting of a composite act**

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

**CHAPTER IV. RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION IN CONNECTION WITH THE ACT OF A STATE OR ANOTHER INTERNATIONAL ORGANIZATION****Article 14. Aid or assistance in the commission of an internationally wrongful act**

An international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if:

- (a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that organization.

**Article 15. Direction and control exercised over the commission of an internationally wrongful act**

An international organization which directs and controls a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for that act if:

- (a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

- (b) the act would be internationally wrongful if committed by that organization.

**Article 16. Coercion of a State or another international organization**

An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

- (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and
- (b) the coercing international organization does so with knowledge of the circumstances of the act.

**Article 17. Circumvention of international obligations through decisions and authorizations addressed to members**

1. An international organization incurs international responsibility if it circumvents one of its international obligations by adopting a decision binding member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization.

2. An international organization incurs international responsibility if it circumvents one of its international obligations by authorizing member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization and the act in question is committed because of that authorization.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member States or international organizations to which the decision or authorization is addressed.

**Article 18. Responsibility of an international organization member of another international organization**

Without prejudice to articles 14 to 17, the international responsibility of an international organization that is a member of another international organization also arises in relation to an act of the latter under the conditions set out in articles 61 and 62 for States that are members of an international organization.

**Article 19. Effect of this Chapter**

This Chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

**CHAPTER V. CIRCUMSTANCES PRECLUDING WRONGFULNESS**

**Article 20. Consent**

Valid consent by a State or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in relation to that State or the former organization to the extent that the act remains within the limits of that consent.

**Article 21. Self-defence**

The wrongfulness of an act of an international organization is precluded if and to the extent that the act constitutes a lawful measure of self-defence under international law.

**Article 22. Countermeasures**

1. Subject to paragraphs 2 and 3, the wrongfulness of an act of an international organization not in conformity with an international obligation towards a State or another international organization is precluded if and to the extent that the act constitutes a countermeasure taken in accordance with

the substantive and procedural conditions required by international law, including those set forth in Chapter II of Part Four for countermeasures taken against another international organization.

2. Subject to paragraph 3, an international organization may not take countermeasures against a responsible member State or international organization unless:

- (a) the conditions referred to in paragraph 1 are met;
- (b) the countermeasures are not inconsistent with the rules of the organization; and
- (c) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible State or international organization concerning cessation of the breach and reparation.

3. Countermeasures may not be taken by an international organization against a member State or international organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

### **Article 23. Force majeure**

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to *force majeure*, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the organization, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

- (a) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or
- (b) the organization has assumed the risk of that situation occurring.

### **Article 24. Distress**

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

- (a) the situation of distress is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or
- (b) the act in question is likely to create a comparable or greater peril.

### **Article 25. Necessity**

1. Necessity may not be invoked by an international organization as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organization unless the act:

(a) is the only means for the organization to safeguard against a grave and imminent peril an essential interest of its member States or of the international community as a whole, when the organization has, in accordance with international law, the function to protect the interest in question; and

(b) does not seriously impair an essential interest of the State or States towards which the international obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by an international organization as a ground for precluding wrongfulness if:

- (a) the international obligation in question excludes the possibility of invoking necessity; or
- (b) the organization has contributed to the situation of necessity.

### **Article 26. Compliance with peremptory norms**

Nothing in this Chapter precludes the wrongfulness of any act of an international organization which is not in conformity with an obligation arising under a peremptory norm of general international law.

### **Article 27. Consequences of invoking a circumstance precluding wrongfulness**

The invocation of a circumstance precluding wrongfulness in accordance with this Chapter is without prejudice to:

- (a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;
- (b) the question of compensation for any material loss caused by the act in question.

## **PART THREE. CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION**

### **CHAPTER I. GENERAL PRINCIPLES**

#### **Article 28. Legal consequences of an internationally wrongful act**

The international responsibility of an international organization which is entailed by an internationally wrongful act in accordance with the provisions of Part Two involves legal consequences as set out in this Part.

#### **Article 29. Continued duty of performance**

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible international organization to perform the obligation breached.

#### **Article 30. Cessation and non-repetition**

The international organization responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act, if it is continuing;
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

#### **Article 31. Reparation**

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

#### **Article 32. Relevance of the rules of the organization**

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.

2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization to the relations between the organization and its member States and organizations.

#### **Article 33. Scope of international obligations set out in this Part**

1. The obligations of the responsible international organization set out in this Part may be owed to one or more States, to one or more other organizations, or to the international community

as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This Part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a State or an international organization.

## **CHAPTER II. REPARATION FOR INJURY**

### **Article 34. Forms of reparation**

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this Chapter.

### **Article 35. Restitution**

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;
- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

### **Article 36. Compensation**

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

### **Article 37. Satisfaction**

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

### **Article 38. Interest**

1. Interest on any principal sum due under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

### **Article 39. Contribution to the injury**

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or international organization or of any person or entity in relation to whom reparation is sought.

**Article 40. Ensuring the fulfilment of the obligation to make reparation**

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this Chapter.

2. The members of a responsible international organization shall take all the appropriate measures that may be required by the rules of the organization in order to enable the organization to fulfil its obligations under this Chapter.

**CHAPTER III. SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW**

**Article 41. Application of this Chapter**

1. This Chapter applies to the international responsibility which is entailed by a serious breach by an international organization of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible international organization to fulfil the obligation.

**Article 42. Particular consequences of a serious breach of an obligation under this Chapter**

1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 41.

2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 41, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this Chapter applies may entail under international law.

**PART FOUR. THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION**

**CHAPTER I. INVOCATION OF THE RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION**

**Article 43. Invocation of responsibility by an injured State or international organization**

A State or an international organization is entitled as an injured State or an injured international organization to invoke the responsibility of another international organization if the obligation breached is owed to:

- (a) that State or the former international organization individually;
- (b) a group of States or international organizations including that State or the former international organization, or the international community as a whole, and the breach of the obligation:
  - (i) specially affects that State or that international organization; or
  - (ii) is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

**Article 44. Notice of claim by an injured State or international organization**

1. An injured State or international organization which invokes the responsibility of another international organization shall give notice of its claim to that organization.

2. The injured State or international organization may specify in particular:

- (a) the conduct that the responsible international organization should take in order to cease the wrongful act, if it is continuing;
- (b) what form reparation should take in accordance with the provisions of Part Three.

#### **Article 45. Admissibility of claims**

1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to the nationality of claims.
2. When the rule of exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy has not been exhausted.

#### **Article 46. Loss of the right to invoke responsibility**

The responsibility of an international organization may not be invoked if:

- (a) the injured State or international organization has validly waived the claim;
- (b) the injured State or international organization is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

#### **Article 47. Plurality of injured States or international organizations**

Where several States or international organizations are injured by the same internationally wrongful act of an international organization, each injured State or international organization may separately invoke the responsibility of the international organization for the internationally wrongful act.

#### **Article 48. Responsibility of an international organization and one or more States or international organizations**

1. Where an international organization and one or more States or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act.
2. Subsidiary responsibility may be invoked insofar as the invocation of the primary responsibility has not led to reparation.
3. Paragraphs 1 and 2:
  - (a) do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered;
  - (b) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.

#### **Article 49. Invocation of responsibility by a State or an international organization other than an injured State or international organization**

1. A State or an international organization other than an injured State or international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to a group of States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.
2. A State other than an injured State is entitled to invoke the responsibility of an international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.
3. An international organization other than an injured international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4

if the obligation breached is owed to the international community as a whole and safeguarding the interest of the international community as a whole underlying the obligation breached is within the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and

(b) performance of the obligation of reparation in accordance with Part Three, in the interest of the injured State or international organization or of the beneficiaries of the obligation breached.

5. The requirements for the invocation of responsibility by an injured State or international organization under articles 44, 45, paragraph 2, and 46 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

#### **Article 50. Scope of this Chapter**

This Chapter is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

### **CHAPTER II. COUNTERMEASURES**

#### **Article 51. Object and limits of countermeasures**

1. An injured State or an injured international organization may only take countermeasures against an international organization which is responsible for an internationally wrongful act in order to induce that organization to comply with its obligations under Part Three.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State or international organization taking the measures towards the responsible international organization.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

4. Countermeasures shall, as far as possible, be taken in such a way as to limit their effects on the exercise by the responsible international organization of its functions.

#### **Article 52. Conditions for taking countermeasures by members of an international organization**

1. Subject to paragraph 2, an injured State or international organization which is a member of a responsible international organization may not take countermeasures against that organization unless:

(a) the conditions referred to in article 51 are met;

(b) the countermeasures are not inconsistent with the rules of the organization; and

(c) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible international organization concerning cessation of the breach and reparation.

2. Countermeasures may not be taken by an injured State or international organization which is a member of a responsible international organization against that organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

#### **Article 53. Obligations not affected by countermeasures**

1. Countermeasures shall not affect:

(a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(b) obligations for the protection of human rights;

(c) obligations of a humanitarian character prohibiting reprisals;

(d) other obligations under peremptory norms of general international law.

2. An injured State or international organization taking countermeasures is not relieved from fulfilling its obligations:

(a) under any dispute settlement procedure applicable between it and the responsible international organization;

(b) to respect any inviolability of organs or agents of the responsible international organization and of the premises, archives and documents of that organization.

#### **Article 54. Proportionality of countermeasures**

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

#### **Article 55. Conditions relating to resort to countermeasures**

1. Before taking countermeasures, an injured State or international organization shall:

(a) call upon the responsible international organization, in accordance with article 44, to fulfil its obligations under Part Three;

(b) notify the responsible international organization of any decision to take countermeasures and offer to negotiate with that organization.

2. Notwithstanding paragraph 1 (b), the injured State or international organization may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(a) the internationally wrongful act has ceased; and

(b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible international organization fails to implement the dispute settlement procedures in good faith.

#### **Article 56. Termination of countermeasures**

Countermeasures shall be terminated as soon as the responsible international organization has complied with its obligations under Part Three in relation to the internationally wrongful act.

#### **Article 57. Measures taken by States or international organizations other than an injured State or organization**

This Chapter does not prejudice the right of any State or international organization, entitled under article 49, paragraphs 1 to 3, to invoke the responsibility of another international organization, to take lawful measures against that organization to ensure cessation of the breach and reparation in the interest of the injured State or organization or of the beneficiaries of the obligation breached.

**PART FIVE. RESPONSIBILITY OF A STATE IN CONNECTION WITH THE CONDUCT OF AN INTERNATIONAL ORGANIZATION**

**Article 58. Aid or assistance by a State in the commission of an internationally wrongful act by an international organization**

1. A State which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.

**Article 59. Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization**

1. A State which directs and controls an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.

**Article 60. Coercion of an international organization by a State**

A State which coerces an international organization to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced international organization; and

(b) the coercing State does so with knowledge of the circumstances of the act.

**Article 61. Circumvention of international obligations of a State member of an international organization**

1. A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.

2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the international organization.

**Article 62. Responsibility of a State member of an international organization for an internationally wrongful act of that organization**

1. A State member of an international organization is responsible for an internationally wrongful act of that organization if:

(a) it has accepted responsibility for that act towards the injured party; or

(b) it has led the injured party to rely on its responsibility.

2. Any international responsibility of a State under paragraph 1 is presumed to be subsidiary.

**Article 63. Effect of this Part**

This Part is without prejudice to the international responsibility of the international organization which commits the act in question, or of any State or other international organization.

**PART SIX. GENERAL PROVISIONS**

**Article 64. *Lex specialis***

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of an international organization, or of a State in connection with the conduct of an international organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of the organization applicable to the relations between an international organization and its members.

**Article 65. Questions of international responsibility not regulated by these articles**

The applicable rules of international law continue to govern questions concerning the responsibility of an international organization or a State for an internationally wrongful act to the extent that they are not regulated by these articles.

**Article 66. Individual responsibility**

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of an international organization or a State.

**Article 67. Charter of the United Nations**

These articles are without prejudice to the Charter of the United Nations.

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## **Chapter VI**

### **PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES**



## General instruments

### 23. CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES (1899)

Done at The Hague on 29 July 1899

Entry into force: 4 September 1900

Basic documents of the Permanent Court of Arbitration [original: French]; The text of the Convention reproduced here is a translation of the French text adopted at the 1899 Peace Conference. The French-language version is authoritative.

His Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc. and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty the King of Spain and in His Name Her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United Mexican States; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxembourg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of all the Russias; His Majesty the King of Serbia; his Majesty the King of Siam; His Majesty the King of Sweden and Norway; the Swiss Federal Council; His Majesty the Emperor of the Ottomans and His Royal Highness the Prince of Bulgaria;

Animated by a strong desire to work for the maintenance of general peace;

Resolved to promote by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, to wit:

(Here follow the names of plenipotentiaries.)

Who, after having communicated their full powers, found in good and due form, have agreed on the following provisions:

#### TITLE I. ON THE MAINTENANCE OF THE GENERAL PEACE

##### Article 1

With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences.

**TITLE II. ON GOOD OFFICES AND MEDIATION****Article 2**

In case of serious disagreement or conflict, before an appeal to arms the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

**Article 3**

Independently of this recourse, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

**Article 4**

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

**Article 5**

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

**Article 6**

Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice, and never have binding force.

**Article 7**

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

**Article 8**

The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

### **TITLE III. ON INTERNATIONAL COMMISSIONS OF INQUIRY**

#### **Article 9**

In differences of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the Signatory Powers recommend that the parties, who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

#### **Article 10**

The International Commissions of Inquiry are constituted by special agreement between the parties in conflict.

The Convention for an inquiry defines the facts to be examined and the extent of the Commissioners' powers.

It settles the procedure.

On the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the Inquiry Convention, are decided by the Commission itself.

#### **Article 11**

The International Commissions of Inquiry are formed, unless otherwise stipulated, in the manner fixed by Article 32 of the present Convention.

#### **Article 12**

The Powers in dispute engage to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

#### **Article 13**

The International Commission of Inquiry communicates its Report to the conflicting Powers, signed by all the members of the Commission.

#### **Article 14**

The Report of the International Commission of Inquiry is limited to a statement of facts, and has in no way the character of an Arbitral Award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement.

### **TITLE IV. ON INTERNATIONAL ARBITRATION**

#### **CHAPTER I. ON THE SYSTEM OF ARBITRATION**

#### **Article 15**

International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law.

#### **Article 16**

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

**Article 17**

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

**Article 18**

The Arbitration Convention implies the engagement to submit loyally to the Award.

**Article 19**

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later, new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

**CHAPTER II. ON THE PERMANENT COURT OF ARBITRATION****Article 20**

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the Rules of Procedure inserted in the present Convention.

**Article 21**

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

**Article 22**

An International Bureau, established at The Hague, serves as record office for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The Signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by special Tribunals.

They undertake also to communicate to the Bureau the Laws, Regulations, and documents eventually showing the execution of the Awards given by the Court.

**Article 23**

Within the three months following its ratification of the present Act, each Signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrators.

The persons thus selected shall be inscribed, as Members of the Court, in a list which shall be notified by the Bureau to all the Signatory Powers.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Signatory Powers.

Two or more Powers may agree on the selection in common of one or more Members.

The same person can be selected by different Powers.

The Members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a Member of the Court, his place shall be filled in accordance with the method of his appointment.

#### **Article 24**

When the Signatory Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the Arbitrators called upon to form the competent Tribunal to decide this difference, must be chosen from the general list of Members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:

Each party appoints two Arbitrators, and these together choose an Umpire.

If the votes are equal, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the Arbitrators.

The Tribunal of Arbitration assembles on the date fixed by the parties.

The Members of the Court, in the discharge of their duties and out of their own country, enjoy diplomatic privileges and immunities.

#### **Article 25**

The Tribunal of Arbitration has its ordinary seat at The Hague.

Except in cases of necessity, the place of session can only be altered by the Tribunal with the assent of the parties.

#### **Article 26**

The International Bureau at The Hague is authorized to place its premises and its staff at the disposal of the Signatory Powers for the operations of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the Regulations, be extended to disputes between non-Signatory Powers, or between Signatory Powers and non-Signatory Powers, if the parties are agreed on recourse to this Tribunal.

#### **Article 27**

The Signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the conflicting parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

#### **Article 28**

A Permanent Administrative Council composed of the Diplomatic Representatives of the Signatory Powers accredited to The Hague and of the Netherlands Minister for Foreign Affairs, who will act as President, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its Rules of Procedure and all other necessary Regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Signatory Powers without delay the Regulations adopted by it. It furnished them with an annual Report on the labours of the Court, the working of the administration, and the expenses.

#### **Article 29**

The expenses of the Bureau shall be borne by the Signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

### **CHAPTER III. ON ARBITRAL PROCEDURE**

#### **Article 30**

With a view to encourage the development of arbitration, the Signatory Powers have agreed on the following Rules which shall be applicable to arbitral procedure, unless other Rules have been agreed on by the parties.

#### **Article 31**

The Powers who have recourse to arbitration sign a special Act ('Compromis'), in which the subject of the difference is clearly defined, as well as the extent of the Arbitrators' powers. This Act implies the undertaking of the parties to submit loyally to the Award.

#### **Article 32**

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the Members of the Permanent Court of Arbitration established by the present Act.

Failing the constitution of the Tribunal by direct agreement between the parties, the following course shall be pursued:

Each party appoints two Arbitrators, and these latter together choose an Umpire.

In case of equal voting, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If no agreement is arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

#### **Article 33**

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitral procedure is settled by him.

#### **Article 34**

The Umpire is by right President of the Tribunal.

When the Tribunal does not include an Umpire, it appoints its own President.

**Article 35**

In case of the death, retirement, or disability from any cause of one of the Arbitrators, his place shall be filled in accordance with the method of his appointment.

**Article 36**

The Tribunal's place of session is selected by the parties. Failing this selection the Tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be changed by the Tribunal without the assent of the parties.

**Article 37**

The parties have the right to appoint delegates or special agents to attend the Tribunal, for the purpose of serving as intermediaries between them and the Tribunal.

They are further authorized to retain, for the defence of their rights and interests before the Tribunal, counsel or advocates appointed by them for this purpose.

**Article 38**

The Tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

**Article 39**

As a general rule the arbitral procedure comprises two distinct phases; preliminary examination and discussion.

Preliminary examination consists in the communication by the respective agents to the members of the Tribunal and to the opposite party of all printed or written Acts and of all documents containing the arguments invoked in the case. This communication shall be made in the form and within the periods fixed by the Tribunal in accordance with Article 49.

Discussion consists in the oral development before the Tribunal of the arguments of the parties.

**Article 40**

Every document produced by one party must be communicated to the other party.

**Article 41**

The discussions are under the direction of the President.

They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in the *procès-verbaux* drawn up by the Secretaries appointed by the President. These *procès-verbaux* alone have an authentic character.

**Article 42**

When the preliminary examination is concluded, the Tribunal has the right to refuse discussion of all fresh Acts or documents which one party may desire to submit to it without the consent of the other party.

**Article 43**

The Tribunal is free to take into consideration fresh Acts or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these Acts or documents, but is obliged to make them known to the opposite party.

**Article 44**

The Tribunal can, besides, require from the agents of the parties the production of all Acts, and can demand all necessary explanations. In case of refusal, the Tribunal takes note of it.

**Article 45**

The agents and counsel of the parties are authorized to present orally to the Tribunal all the arguments they may think expedient in defence of their case.

**Article 46**

They have the right to raise objections and points.

The decisions of the Tribunal on those points are final, and cannot form the subject of any subsequent discussion.

**Article 47**

The members of the Tribunal have the right to put questions to the agents and counsel of the parties, and to demand explanations from them on doubtful points.

Neither the questions put nor the remarks made by members of the Tribunal during the discussions can be regarded as an expression of opinion by the Tribunal in general, or by its members in particular.

**Article 48**

The Tribunal is authorized to declare its competence in interpreting the 'Compromis' as well as the other Treaties which may be invoked in the case, and in applying the principles of international law.

**Article 49**

The Tribunal has the right to issue Rules of Procedure for the conduct of the case, to decide the forms and periods within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

**Article 50**

When the agents and counsel of the parties have submitted all explanations and evidence in support of their case, the President pronounces the discussion closed.

**Article 51**

The deliberations of the Tribunal take place in private.

Every decision is taken by a majority of members of the Tribunal.

The refusal of a member to vote must be recorded in the *procès-verbal*.

**Article 52**

The Award, given by a majority of votes, is accompanied by a statement of reasons. It is drawn up in writing and signed by each member of the Tribunal.

Those members who are in the minority may record their dissent when signing.

**Article 53**

The Award is read out at a public meeting of the Tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

**Article 54**

The Award, duly pronounced and notified to the agents of the parties at variance, puts an end to the dispute definitively and without appeal.

**Article 55**

The parties can reserve in the 'Compromis' the right to demand the revision of the Award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the Award, and which, at the time the discussion was closed, was unknown to the Tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the foregoing paragraph, and declaring the demand admissible on this ground.

The 'Compromis' fixes the period within which the demand for revision must be made.

**Article 56**

The Award is only binding on the parties who concluded the 'Compromis'.

When there is a question of interpreting a Convention to which Powers other than those concerned in the dispute are parties, the latter notify to the former the 'Compromis' they have concluded. Each of these Powers has the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the Award is equally binding on them.

**Article 57**

Each party pays its own expenses and an equal share of those of the Tribunal.

**GENERAL PROVISIONS**

**Article 58**

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers who were represented at the International Peace Conference at The Hague.

**Article 59**

The non-Signatory Powers who were represented at the International Peace Conference can adhere to the present Convention. For this purpose they must make known their adhesion to the Contracting Powers by a written notification addressed to the Netherlands Government, and communicated by it to all the other Contracting Powers.

**Article 60**

The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a subsequent Agreement among the Contracting Powers.

### Article 61

In the event of one of the High Contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherlands Government, and by it communicated at once to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals to it.

Done at The Hague, the 29th July, 1899, in a single copy, which shall remain in the archives of the Netherlands Government, and copies of it, duly certified, be sent through the diplomatic channel to the Contracting Powers.

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## 24. CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES (1907)

Done at The Hague on 18 October 1907

Entry into force: 26 January 1910

Basic documents of the Permanent Court of Arbitration [original: French]. The text of the Convention reproduced here is a translation of the French text adopted at the 1907 Peace Conference. The French-language version is authoritative.

His Majesty the German Emperor, King of Prussia; the President of the United States of America; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; the President of the Republic of Bolivia; the President of the Republic of the United States of Brazil; His Royal Highness the Prince of Bulgaria; the President of the Republic of Chile; His Majesty the Emperor of China; the President of the Republic of Colombia; the Provisional Governor of the Republic of Cuba; His Majesty the King of Denmark; the President of the Dominican Republic; the President of the Republic of Ecuador; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Haiti; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxembourg, Duke of Nassau; the President of the United States of Mexico; His Royal Highness the Prince of Montenegro; the President of the Republic of Nicaragua; His Majesty the King of Norway; the President of the Republic of Panama; the President of the Republic of Paraguay; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; His Majesty the Emperor of the Ottomans; the President of the Oriental Republic of Uruguay; the President of the United States of Venezuela;

Animated by the sincere desire to work for the maintenance of general peace;

Resolved to promote by all the efforts in their power the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Tribunal of Arbitration accessible to all, in the midst of independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an International Agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous, with this object, of insuring the better working in practice of Commissions of Inquiry and Tribunals of Arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure;

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes;

The High Contracting Parties have resolved to conclude a new Convention for this purpose, and have appointed the following as their Plenipotentiaries:

(Here follow the names of Plenipotentiaries.)

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:

## **PART I. THE MAINTENANCE OF GENERAL PEACE**

### **Article 1**

With a view to obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

## **PART II. GOOD OFFICES AND MEDIATION**

### **Article 2**

In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

### **Article 3**

Independently of this recourse, the Contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

### **Article 4**

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

### **Article 5**

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

**Article 6**

Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of Powers strangers to the dispute have exclusively the character of advice, and never have binding force.

**Article 7**

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted in the absence of an agreement to the contrary.

**Article 8**

The Contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

**PART III. INTERNATIONAL COMMISSIONS OF INQUIRY****Article 9**

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of facts, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

**Article 10**

International Commissions of Inquiry are constituted by special agreement between the parties in dispute.

The Inquiry Convention defines the facts to be examined; it determines the mode and time in which the Commission is to be formed and the extent of the powers of the Commissioners.

It also determines, if there is need, where the Commission is to sit, and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint Assessors, the Convention of Inquiry shall determine the mode of their selection and the extent of their powers.

**Article 11**

If the Inquiry Convention has not determined where the Commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, cannot be altered by the Commission except with the assent of the parties.

If the Inquiry Convention has not determined what languages are to be employed, the question shall be decided by the Commission.

**Article 12**

Unless an undertaking is made to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 45 and 57 of the present Convention.

**Article 13**

Should one of the Commissioners or one of the Assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

**Article 14**

The parties are entitled to appoint special agents to attend the Commission of Inquiry, whose duty it is to represent them and to act as intermediaries between them and the Commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the Commission.

**Article 15**

The International Bureau of the Permanent Court of Arbitration acts as registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers for the use of the Commission of Inquiry.

**Article 16**

If the Commission meets elsewhere than at The Hague, it appoints a Secretary- General, whose office serves as registry.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

**Article 17**

In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

**Article 18**

The Commission shall settle the details of the procedure not covered by the special Inquiry Convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

**Article 19**

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

**Article 20**

The Commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members. Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

**Article 21**

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

**Article 22**

The Commission is entitled to ask from either party for such explanations and information as it considers necessary.

**Article 23**

The parties undertake to supply the Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

They undertake to make use of the means at their disposal, under their municipal law, to insure the appearance of the witnesses or experts who are in their territory and have been summoned before the Commission.

If the witnesses or experts are unable to appear before the Commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

**Article 24**

For all notices to be served by the Commission in the territory of a third Contracting Power, the Commission shall apply direct to the Government of the said Power. The same rule applies in the case of steps being taken on the spot to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The Commission will equally be always entitled to act through the Power on whose territory it sits.

**Article 25**

The witnesses and experts are summoned on the request of the parties or by the Commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately in the presence of the agents and counsel, and in the order fixed by the Commission.

**Article 26**

The examination of witnesses is conducted by the President.

The members of the Commission may however put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

**Article 27**

The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

**Article 28**

A Minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is asked to sign it.

**Article 29**

The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the Commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

**Article 30**

The Commission considers its decisions in private and the proceedings are secret.

All questions are decided by a majority of the members of the Commission.

If a member declines to vote, the fact must be recorded in the Minutes.

**Article 31**

The sittings of the Commission are not public, nor the Minutes and documents connected with the inquiry published except in virtue of a decision of the Commission taken with the consent of the parties.

**Article 32**

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the Commission adjourns to deliberate and to draw up its Report.

**Article 33**

The Report is signed by all the members of the Commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the Report is not affected.

**Article 34**

The Report of the Commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the Report is given to each party.

**Article 35**

The Report of the Commission is limited to a statement of facts, and has in no way the character of an Award. It leaves to the parties entire freedom as to the effect to be given to the statement.

**Article 36**

Each party pays its own expenses and an equal share of the expenses incurred by the Commission.

**PART IV. INTERNATIONAL ARBITRATION****CHAPTER I. THE SYSTEM OF ARBITRATION****Article 37**

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

**Article 38**

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

**Article 39**

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

**Article 40**

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it.

**CHAPTER II. THE PERMANENT COURT OF ARBITRATION****Article 41**

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

**Article 42**

The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

**Article 43**

The Permanent Court sits at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has charge of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a certified copy of any conditions of arbitration arrived at between them and of any Award concerning them delivered by a special Tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the Awards given by the Court.

#### **Article 44**

Each Contracting Power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus elected are inscribed, as Members of the Court, in a list which shall be notified to all the Contracting Powers by the Bureau.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

Two or more Powers may agree on the selection in common of one or more Members.

The same person can be selected by different Powers. The Members of the Court are appointed for a term of six years. These appointments are renewable.

Should a Member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.

#### **Article 45**

When the Contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the Arbitrators called upon to form the Tribunal with jurisdiction to decide this difference must be chosen from the general list of Members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:

Each party appoints two Arbitrators, of whom one only can be its national or chosen from among the persons selected by it as Members of the Permanent Court. These Arbitrators together choose an Umpire.

If the votes are equally divided, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of Members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be Umpire.

#### **Article 46**

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court, the text of their 'Compromis', and the names of the Arbitrators.

The Bureau communicates without delay to each Arbitrator the 'Compromis', and the names of the other members of the Tribunal.

The Tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the Tribunal, in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

#### **Article 47**

The Bureau is authorized to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.

#### **Article 48**

The Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

In case of dispute between two Powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

#### **Article 49**

The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherlands Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau.

The Council settles its rules of procedure and all other necessary regulations.

It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Contracting Powers without delay the regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenditure. The Report likewise contains a resume of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 3 and 4.

#### **Article 50**

The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

### **CHAPTER III. ARBITRATION PROCEDURE**

#### **Article 51**

With a view to encouraging the development of arbitration, the Contracting Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

#### **Article 52**

The Powers which have recourse to arbitration sign a 'Compromis', in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The 'Compromis' likewise defines, if there is occasion, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

#### Article 53

The Permanent Court is competent to settle the 'Compromis', if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a 'Compromis' in all disputes and not either explicitly or implicitly excluding the settlement of the 'Compromis' from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the 'Compromis' should be settled in some other way.

#### Article 54

In the cases contemplated in the preceding Article, the 'Compromis' shall be settled by a Commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is President of the Commission *ex officio*.

#### Article 55

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the Members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the Tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

#### Article 56

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitration procedure is settled by him.

#### Article 57

The Umpire is President of the Tribunal *ex officio*.

When the Tribunal does not include an Umpire, it appoints its own President.

#### Article 58

When the 'Compromis' is settled by a Commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

**Article 59**

Should one of the Arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

**Article 60**

The Tribunal sits at The Hague, unless some other place is selected by the parties.

The Tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the Tribunal, except with the consent of the parties.

**Article 61**

If the question as to what languages are to be used has not been settled by the 'Compromis', it shall be decided by the Tribunal.

**Article 62**

The parties are entitled to appoint special agents to attend the Tribunal to act as intermediaries between themselves and the Tribunal.

They are further authorized to retain for the defence of their rights and interests before the Tribunal counsel or advocates appointed by themselves for this purpose.

The Members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them Members of the Court.

**Article 63**

As a general rule, arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the Tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the 'Compromis'.

The time fixed by the 'Compromis' may be extended by mutual agreement by the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the Tribunal of the arguments of the parties.

**Article 64**

A certified copy of every document produced by one party must be communicated to the other party.

**Article 65**

Unless special circumstances arise, the Tribunal does not meet until the pleadings are closed.

**Article 66**

The discussions are under the control of the President. They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries and alone have an authentic character.

**Article 67**

After the close of the pleadings, the Tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

**Article 68**

The Tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

**Article 69**

The Tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the Tribunal takes note of it.

**Article 70**

The agents and the counsel of the parties are authorized to present orally to the Tribunal all the arguments they may consider expedient in defence of their case.

**Article 71**

They are entitled to raise objections and points. The decisions of the Tribunal on these points are final and cannot form the subject of any subsequent discussion.

**Article 72**

The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the Tribunal in the course of the discussions, can be regarded as an expression of opinion by the Tribunal in general or by its members in particular.

**Article 73**

The Tribunal is authorized to declare its competence in interpreting the 'Compromis', as well as the other Treaties which may be invoked, and in applying the principles of law.

**Article 74**

The Tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

**Article 75**

The parties undertake to supply the Tribunal, as fully as they consider possible, with all the information required for deciding the case.

**Article 76**

For all notices which the Tribunal has to serve in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Court will equally be always entitled to act through the Power on whose territory it sits.

**Article 77**

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

**Article 78**

The Tribunal considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members of the Tribunal.

**Article 79**

The Award must give the reasons on which it is based. It contains the names of the Arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

**Article 80**

The Award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

**Article 81**

The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.

**Article 82**

Any dispute arising between the parties as to the interpretation and execution of the Award shall, in the absence of an Agreement to the contrary, be submitted to the Tribunal which pronounced it.

**Article 83**

The parties can reserve in the 'Compromis' the right to demand the revision of the Award.

In this case and unless there be an Agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the Award and which was unknown to the Tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The 'Compromis' fixes the period within which the demand for revision must be made.

**Article 84**

The Award is not binding except on the parties in dispute.

When it concerns the interpretation of a Convention to which Powers other than those in dispute are parties, they shall inform all the Signatory Powers in good time. Each of these Powers

is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the Award is equally binding on them.

#### Article 85

Each party pays its own expenses and an equal share of the expenses of the Tribunal.

### CHAPTER IV. ARBITRATION BY SUMMARY PROCEDURE

#### Article 86

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

#### Article 87

Each of the parties in dispute appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the Members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the Umpire is determined by lot.

The Umpire presides over the Tribunal, which gives its decisions by a majority of votes.

#### Article 88

In the absence of any previous agreement the Tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

#### Article 89

Each party is represented before the Tribunal by an agent, who serves as intermediary between the Tribunal and the Government who appointed him.

#### Article 90

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The Tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

### PART V. FINAL PROVISIONS

#### Article 91

The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899.

#### Article 92

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherlands Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherlands Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherlands Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to those Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform the Powers of the date on which it received the notification.

#### Article 93

Non-Signatory Powers which have been invited to the Second Peace Conference may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherlands Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

#### Article 94

The conditions on which the Powers which have not been invited to the Second Peace Conference may adhere to the present Convention shall form the subject of a subsequent Agreement between the Contracting Powers.

#### Article 95

The present Convention shall take effect, in the case of the Powers which were not a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherlands Government.

#### Article 96

In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherlands Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherlands Government.

#### Article 97

A register kept by the Netherlands Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherlands Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Contracting Powers.

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## 25. MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

General Assembly resolution 37/10 of 15 November 1982, annex

*The General Assembly,*

*Reaffirming* the principle of the Charter of the United Nations that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

*Conscious* that the Charter of the United Nations embodies the means and an essential framework for the peaceful settlement of international disputes, the continuance of which is likely to endanger the maintenance of international peace and security.

*Recognizing* the important role of the United Nations and the need to enhance its effectiveness in the peaceful settlement of international disputes and the maintenance of international peace and security, in accordance with the principles of justice and international law, in conformity with the Charter of the United Nations,

*Reaffirming* the principle of the Charter of the United Nations that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

*Reiterating* that no State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State,

*Reaffirming* the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

*Bearing in mind* the importance of maintaining and strengthening international peace and security and the development of friendly relations among States, irrespective of their political, economic and social systems or levels of economic development,

*Reaffirming* the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and in other relevant resolutions of the General Assembly,

*Stressing* the need for all States to desist from any forcible action which deprives peoples, particularly peoples under colonial and racist regimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence, as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

*Mindful* of existing international instruments as well as respective principles and rules concerning the peaceful settlement of international disputes, including the exhaustion of local remedies whenever applicable.

*Determined* to promote international co-operation in the political field and to encourage the progressive development of international law and its codification, particularly in relation to the peaceful settlement of international disputes.

*Solemnly declares that:*

### I

1. All States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international

peace and security. They shall live together in peace with one another as good neighbours and strive for the adoption of meaningful measures for strengthening international peace and security.

2. Every State shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.

3. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and with the principles of justice and international law. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with the sovereign equality of States.

4. States parties to a dispute shall continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law.

5. States shall seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.

6. States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies before referring them to the Security Council. This does not preclude States from bringing any dispute to the attention of the Security Council or of the General Assembly in accordance with the Charter of the United Nations.

7. In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed means to settle the dispute peacefully. Should the parties fail to settle by any of the above means a dispute the continuance of which is likely to endanger the maintenance of international peace and security, they shall refer it to the Security Council in accordance with the Charter of the United Nations and without prejudice to the functions and powers of the Council set forth in the relevant provisions of Chapter VI of the Charter.

8. States parties to an international dispute, as well as other States, shall refrain from any action whatsoever which may aggravate the situation so as to endanger the maintenance of international peace and security and make more difficult or impede the peaceful settlement of the dispute, and shall act in this respect in accordance with the purposes and principles of the United Nations.

9. States should consider concluding agreements for the peaceful settlement of disputes among them. They should also include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

10. States should, without prejudice to the right of free choice of means, bear in mind that direct negotiations are a flexible and effective means of peaceful settlement of their disputes. When they choose to resort to direct negotiations, States should negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties. States should be equally prepared to seek the settlement of their disputes by the other means mentioned in the present Declaration.

11. States shall in accordance with international law implement in good faith all the provisions of agreements concluded by them for the settlement of their disputes.

12. In order to facilitate the exercise by the peoples concerned of the right to self-determination as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the parties to

a dispute may have the possibility, if they agree to do so and as appropriate, to have recourse to the relevant procedures mentioned in the present Declaration, for the peaceful settlement of the dispute.

13. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the States parties to the dispute.

## II

1. Member States should make full use of the provisions of the Charter of the United Nations, including the procedures and means provided for therein, particularly Chapter VI, concerning the peaceful settlement of disputes.

2. Member States shall fulfil in good faith the obligations assumed by them in accordance with the Charter of the United Nations. They should, in accordance with the Charter, as appropriate, duly take into account the recommendations of the Security Council relating to the peaceful settlement of disputes. They should also, in accordance with the Charter, as appropriate, duly take into account the recommendations adopted by the General Assembly, subject to Articles 11 and 12 of the Charter, in the field of peaceful settlement of disputes.

3. Member States reaffirm the important role conferred on the General Assembly by the Charter of the United Nations in the field of peaceful settlement of disputes and stress the need for it to discharge effectively its responsibilities. Accordingly, they should:

(a) Bear in mind that the General Assembly may discuss any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations and, subject to Article 12 of the Charter, recommend measures for its peaceful adjustment;

(b) Consider making use, when they deem it appropriate, of the possibility of bringing to the attention of the General Assembly any dispute or any situation which might lead to international friction or give rise to a dispute;

(c) Consider utilizing, for the peaceful settlement of their disputes, the subsidiary organs established by the General Assembly in the performance of its functions under the Charter;

(d) Consider, when they are parties to a dispute brought to the attention of the General Assembly, making use of consultations within the framework of the Assembly, with a view to facilitating an early settlement of their dispute.

4. Member States should strengthen the primary role of the Security Council so that it may fully and effectively discharge its responsibilities, in accordance with the Charter of the United Nations, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security. To this end they should:

(a) Be fully aware of their obligation to refer to the Security Council such a dispute to which they are parties if they fail to settle it by the means indicated in Article 33 of the Charter;

(b) Make greater use of the possibility of bringing to the attention of the Security Council any dispute or any situation which might lead to international friction or give rise to a dispute;

(c) Encourage the Security Council to make wider use of the opportunities provided for by the Charter in order to review disputes or situations the continuance of which is likely to endanger the maintenance of international peace and security;

(d) Consider making greater use of the fact-finding capacity of the Security Council in accordance with the Charter;

(e) Encourage the Security Council to make wider use, as a means to promote peaceful settlement of disputes, of the subsidiary organs established by it in the performance of its functions under the Charter;

(f) Bear in mind that the Security Council may, at any stage of a dispute of the nature referred to in Article 33 of the Charter or of a situation of like nature, recommend appropriate procedures or methods of adjustment;

(g) Encourage the Security Council to act without delay, in accordance with its functions and powers, particularly in cases where international disputes develop into armed conflicts.

5. States should be fully aware of the role of the International Court of Justice, which is the principal judicial organ of the United Nations. Their attention is drawn to the facilities offered by the International Court of Justice for the settlement of legal disputes, especially since the revision of the Rules of the Court.

States may entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

States should bear in mind:

(a) That legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the Statute of the Court;

(b) That it is desirable that they:

- (i) Consider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;
- (ii) Study the possibility of choosing, in the free exercise of their sovereignty, to recognize as compulsory the jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;
- (iii) Review the possibility of identifying cases in which use may be made of the International Court of Justice.

The organs of the United Nations and the specialized agencies should study the advisability of making use of the possibility of requesting advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities, provided that they are duly authorized to do so.

Recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

6. The Secretary-General should make full use of the provisions of the Charter of the United Nations concerning the responsibilities entrusted to him. The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. He shall perform such other functions as are entrusted to him by the Security Council or by the General Assembly. Reports in this connection shall be made whenever requested to the Security Council or the General Assembly.

*Urges* all States to observe and promote in good faith the provisions of the present Declaration in the peaceful settlement of their international disputes;

*Declares* that nothing in the present Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the peaceful settlement of disputes;

*Declares* that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration;

*Stresses* the need, in accordance with the Charter, to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law, as appropriate, and through enhancing the effectiveness of the United Nations in this field.

## 26. PRINCIPLES AND GUIDELINES FOR INTERNATIONAL NEGOTIATIONS

General Assembly resolution 53/101 of 8 December 1998

*The General Assembly,*

*Recalling* the purposes and principles of the Charter of the United Nations,

*Reaffirming* the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and of the Manila Declaration on the Peaceful Settlement of International Disputes,

*Taking into account* the objectives of the United Nations Decade of International Law,

*Considering* that international negotiations constitute a flexible and effective means for, among other things, the peaceful settlement of disputes among States and for the creation of new international norms of conduct,

*Bearing in mind* that in their negotiations States should be guided by the relevant principles and rules of international law,

*Conscious* of the existence of different means of peaceful settlement of disputes, as enshrined in the Charter and recognized by international law, and reaffirming, in this context, the right of free choice of those means,

*Bearing in mind* the important role that constructive and effective negotiations can play in attaining the purposes of the Charter by contributing to the management of international relations, the peaceful settlement of disputes and the creation of new international norms of conduct of States,

*Noting* that the identification of principles and guidelines of relevance to international negotiations could contribute to enhancing the predictability of negotiating parties, reducing uncertainty and promoting an atmosphere of trust at negotiations,

*Recognizing* that the following could offer a general, non-exhaustive frame of reference for negotiations,

1. *Reaffirms* the following principles of international law which are of relevance to international negotiations:

(a) Sovereign equality of all States, notwithstanding differences of an economic, social, political or other nature;

(b) States have the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations;

(c) States have the duty to fulfil in good faith their obligations under international law;

(d) States have the duty to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(e) Any agreement is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter;

(f) States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences;

(g) States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;

2. *Affirms* the importance of conducting negotiations in accordance with international law in a manner compatible with and conducive to the achievement of the stated objective of negotiations and in line with the following guidelines:

- (a) Negotiations should be conducted in good faith;
- (b) States should take due account of the importance of engaging, in an appropriate manner, in international negotiations the States whose vital interests are directly affected by the matters in question;
- (c) The purpose and object of all negotiations must be fully compatible with the principles and norms of international law, including the provisions of the Charter;
- (d) States should adhere to the mutually agreed framework for conducting negotiations;
- (e) States should endeavour to maintain a constructive atmosphere during negotiations and to refrain from any conduct which might undermine the negotiations and their progress;
- (f) States should facilitate the pursuit or conclusion of negotiations by remaining focused throughout on the main objectives of the negotiations;
- (g) States should use their best endeavours to continue to work towards a mutually acceptable and just solution in the event of an impasse in negotiations.

## Institutional and procedural rules

### 27. MODEL RULES ON ARBITRAL PROCEDURE

*Yearbook of the International Law Commission, 1958, vol. II*

#### Preamble

The undertaking to arbitrate is based on the following fundamental rules:

1. Any undertaking to have recourse to arbitration in order to settle a dispute between States constitutes a legal obligation which must be carried out in good faith.
2. Such an undertaking results from agreement between the parties and may relate to existing disputes or to disputes arising subsequently.
3. The undertaking must be embodied in a written instrument, whatever the form of the instrument may be.
4. The procedures suggested to States Parties to a dispute by these model rules shall not be compulsory unless the States concerned have agreed, either in the *compromis* or in some other undertaking, to have recourse thereto.
5. The parties shall be equal in all proceedings before the arbitral tribunal.

#### THE EXISTENCE OF A DISPUTE AND THE SCOPE OF THE UNDERTAKING TO ARBITRATE

##### Article 1

1. If, before the constitution of the arbitral tribunal, the parties to an undertaking to arbitrate disagree as to the existence of a dispute, or as to whether the existing dispute is wholly or partly within the scope of the obligation to go to arbitration, such preliminary question shall, at the request of any of the parties and failing agreement between them upon the adoption of another procedure, be brought before the International Court of Justice for decision by means of its summary procedure.
2. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.
3. If the arbitral tribunal has already been constituted, any dispute concerning arbitrability shall be referred to it.

## THE COMPROMIS

### Article 2

1. Unless there are earlier agreements which suffice for the purpose, for example in the undertaking to arbitrate itself, the parties having recourse to arbitration shall conclude a *compromis* which shall specify, as a minimum:

- (a) The undertaking to arbitrate according to which the dispute is to be submitted to the arbitrators;
- (b) The subject matter of the dispute and, if possible, the points on which the parties are or are not agreed;
- (c) The method of constituting the tribunal and the number of arbitrators.

2. In addition, the *compromis* shall include any other provisions deemed desirable by the parties, in particular:

- (i) The rules of law and the principles to be applied by the tribunal, and the right, if any, conferred on it to decide *ex aequo et bono* as though it had legislative functions in the matter;
- (ii) The power, if any, of the tribunal to make recommendations to the parties;
- (iii) Such power as may be conferred on the tribunal to make its own rules of procedure;
- (iv) The procedure to be followed by the tribunal; provided that, once constituted, the tribunal shall be free to override any provisions of the *compromis* which may prevent it from rendering its award;
- (v) The number of members required for the constitution of a quorum for the conduct of the hearings;
- (vi) The majority required for the award;
- (vii) The time limit within which the award shall be rendered;
- (viii) The right of the members of the tribunal to attach dissenting or individual opinions to the award, or any prohibition of such opinions;
- (ix) The languages to be employed in the course of the proceedings;
- (x) The manner in which the costs and disbursements shall be apportioned;
- (xi) The services which the International Court of Justice may be asked to render.

This enumeration is not intended to be exhaustive.

## CONSTITUTION OF THE TRIBUNAL

### Article 3

1. Immediately after the request made by one of the States Parties to the dispute for the submission of the dispute to arbitration, or after the decision on the arbitrability of the dispute, the parties to an undertaking to arbitrate shall take the necessary steps, either by means of the *compromis* or by special agreement, in order to arrive at the constitution of the arbitral tribunal.

2. If the tribunal is not constituted within three months from the date of the request made for the submission of the dispute to arbitration, or from the date of the decision on arbitrability, the President of the International Court of Justice shall, at the request of either party, appoint the arbitrators not yet designated. If the President is prevented from acting or is a national of one of the parties, the appointments shall be made by the Vice-President. If the Vice-President is prevented from acting or is a national of one of the parties, the appointments shall be made by the oldest member of the Court who is not a national of either party.

3. The appointments referred to in paragraph 2 shall, after consultation with the parties, be made in accordance with the provisions of the *compromis* or of any other instrument consequent

upon the undertaking to arbitrate. In the absence of such provisions, the composition of the tribunal shall, after consultation with the parties, be determined by the President of the International Court of Justice or by the judge acting in his place. It shall be understood that in this event the number of the arbitrators must be uneven and should preferably be five.

4. Where provision is made for the choice of a president of the tribunal by the other arbitrators, the tribunal shall be deemed to be constituted when the president is selected. If the president has not been chosen within two months of the appointment of the arbitrators, he shall be designated in accordance with the procedure prescribed in paragraph 2.

5. Subject to the special circumstances of the case, the arbitrators shall be chosen from among persons of recognized competence in international law.

#### **Article 4**

1. Once the tribunal has been constituted, its composition shall remain unchanged until the award has been rendered.

2. A party may, however, replace an arbitrator appointed by it, provided that the tribunal has not yet begun its proceedings. Once the proceedings have begun, an arbitrator appointed by a party may not be replaced except by mutual agreement between the parties.

3. Arbitrators appointed by mutual agreement between the parties, or by agreement between arbitrators already appointed, may not be changed after the proceedings have begun, save in exceptional circumstances. Arbitrators appointed in the manner provided for in article 3, paragraph 2, may not be changed even by agreement between the parties.

4. The proceedings are deemed to have begun when the president of the tribunal or the sole arbitrator has made the first procedural order.

#### **Article 5**

If, whether before or after the proceedings have begun, a vacancy should occur on account of the death, incapacity or resignation of an arbitrator, it shall be filled in accordance with the procedure prescribed for the original appointment.

#### **Article 6**

1. A party may propose the disqualification of one of the arbitrators on account of a fact arising subsequently to the constitution of the tribunal. It may only propose the disqualification of one of the arbitrators on account of a fact arising prior to the constitution of the tribunal if it can show that the appointment was made without knowledge of that fact or as a result of fraud. In either case, the decision shall be taken by the other members of the tribunal.

2. In the case of a sole arbitrator or of the president of the tribunal, the question of disqualification shall, in the absence of agreement between the parties, be decided by the International Court of Justice on the application of one of them.

3. Any resulting vacancy or vacancies shall be filled in accordance with the procedure prescribed for the original appointments.

#### **Article 7**

Where a vacancy has been filled after the proceedings have begun, the proceedings shall continue from the point they had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral proceedings shall be recommenced from the beginning, if these have already been started.

**POWERS OF THE TRIBUNAL AND THE PROCESS OF ARBITRATION****Article 8**

1. When the undertaking to arbitrate or any supplementary agreement contains provisions which seem sufficient for the purpose of a *compromis*, and the tribunal has been constituted, either party may submit the dispute to the tribunal by application. If the other party refuses to answer the application on the ground that the provisions above referred to are insufficient, the tribunal shall decide whether there is already sufficient agreement between the parties on the essential elements of a *compromis* as set forth in article 2. In the case of an affirmative decision, the tribunal shall prescribe the necessary measures for the institution or continuation of the proceedings. In the contrary case, the tribunal shall order the parties to complete or conclude the *compromis* within such time limits as it deems reasonable.

2. If the parties fail to agree or to complete the *compromis* within the time limit fixed in accordance with the preceding paragraph, the tribunal, within three months after the parties report failure to agree — or after the decision, if any, on the arbitrability of the dispute — shall proceed to hear and decide the case on the application of either party.

**Article 9**

The arbitral tribunal, which is the judge of its own competence, has the power to interpret the *compromis* and the other instruments on which that competence is based.

**Article 10**

1. In the absence of any agreement between the parties concerning the law to be applied, the tribunal shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. If the agreement between the parties so provides, the tribunal may also decide *ex aequo et bono*.

**Article 11**

The tribunal may not bring in a finding of *non liquet* on the ground of the silence or obscurity of the law to be applied.

**Article 12**

1. In the absence of any agreement between the parties concerning the procedure of the tribunal, or if the rules laid down by them are insufficient, the tribunal shall be competent to formulate or complete the rules of procedure.

2. All decisions shall be taken by a majority vote of the members of the tribunal.

**Article 13**

If the languages to be employed are not specified in the *compromis*, this question shall be decided by the tribunal.

**Article 14**

1. The parties shall appoint agents before the tribunal to act as intermediaries between them and the tribunal.
2. They may retain counsel and advocates for the prosecution of their rights and interests before the tribunal.
3. The parties shall be entitled through their agents, counsel or advocates to submit in writing and orally to the tribunal any arguments they may deem expedient for the prosecution of their case. They shall have the right to raise objections and incidental points. The decisions of the tribunal on such matters shall be final.
4. The members of the tribunal shall have the right to put questions to agents, counsel or advocates, and to ask them for explanations. Neither the questions put nor the remarks made during the hearing are to be regarded as an expression of opinion by the tribunal or by its members.

**Article 15**

1. The arbitral procedure shall in general comprise two distinct phases: pleadings and hearing.
2. The pleadings shall consist in the communication by the respective agents to the members of the tribunal and to the opposite party of memorials, counter-memorials and, if necessary, of replies and rejoinders. Each party must attach all papers and documents cited by it in the case.
3. The time limits fixed by the *compromis* may be extended by mutual agreement between the parties, or by the tribunal when it deems such extension necessary to enable it to reach a just decision.
4. The hearing shall consist in the oral development of the parties' arguments before the tribunal.
5. A certified true copy of every document produced by either party shall be communicated to the other party.

**Article 16**

1. The hearing shall be conducted by the president. It shall be public only if the tribunal so decides with the consent of the parties.
2. Records of the hearing shall be kept and signed by the president, registrar or secretary; only those so signed shall be authentic.

**Article 17**

1. After the tribunal has closed the written pleadings, it shall have the right to reject any papers and documents not yet produced which either party may wish to submit to it without the consent of the other party. The tribunal shall, however, remain free to take into consideration any such papers and documents which the agents, advocates or counsel of one or other of the parties may bring to its notice, provided that they have been made known to the other party. The latter shall have the right to require a further extension of the written pleadings so as to be able to give a reply in writing.
2. The tribunal may also require the parties to produce all necessary documents and to provide all necessary explanations. It shall take note of any refusal to do so.

**Article 18**

1. The tribunal shall decide as to the admissibility of the evidence that may be adduced, and shall be the judge of its probative value. It shall have the power, at any stage of the proceedings, to call upon experts and to require the appearance of witnesses. It may also, if necessary, decide to visit the scene connected with the case before it.
2. The parties shall cooperate with the tribunal in dealing with the evidence and in the other measures contemplated by paragraph 1. The tribunal shall take note of the failure of any party to comply with the obligations of this paragraph.

**Article 19**

In the absence of any agreement to the contrary implied by the undertaking to arbitrate or contained in the *compromis*, the tribunal shall decide on any ancillary claims which it considers to be inseparable from the subject matter of the dispute and necessary for its final settlement.

**Article 20**

The tribunal, or in case of urgency its president subject to confirmation by the tribunal, shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

**Article 21**

1. When, subject to the control of the tribunal, the agents, advocates and counsel have completed their presentation of the case, the proceedings shall be formally declared closed.

2. The tribunal shall, however, have the power, so long as the award has not been rendered, to reopen the proceedings after their closure, on the ground that new evidence is forthcoming of such a nature as to constitute a decisive factor, or if it considers, after careful consideration, that there is a need for clarification on certain points.

**Article 22**

1. Except where the claimant admits the soundness of the defendant's case, discontinuance of the proceedings by the claimant party shall not be accepted by the tribunal without the consent of the defendant.

2. If the case is discontinued by agreement between the parties, the tribunal shall take note of the fact.

**Article 23**

If the parties reach a settlement, it shall be taken note of by the tribunal. At the request of either party, the tribunal may, if it thinks fit, embody the settlement in an award.

**Article 24**

The award shall normally be rendered within the period fixed by the *compromis*, but the tribunal may decide to extend this period if it would otherwise be unable to render the award.

**Article 25**

1. Whenever one of the parties has not appeared before the tribunal, or has failed to present its case, the other party may call upon the tribunal to decide in favour of its case.

2. The arbitral tribunal may grant the defaulting party a period of grace before rendering the award.

3. On the expiry of this period of grace, the tribunal shall render an award after it has satisfied itself that it has jurisdiction. It may only decide in favour of the submissions of the party appearing, if satisfied that they are well founded in fact and in law.

**DELIBERATIONS OF THE TRIBUNAL****Article 26**

The deliberations of the tribunal shall remain secret.

**Article 27**

1. All the arbitrators shall participate in the decisions.

2. Except in cases where the *compromis* provides for a quorum, or in cases where the absence of an arbitrator occurs without the permission of the president of the tribunal, the arbitrator who is absent shall be replaced by an arbitrator nominated by the President of the International Court of Justice. In the case of such replacement the provisions of article 7 shall apply.

## THE AWARD

### Article 28

1. The award shall be rendered by a majority vote of the members of the tribunal. It shall be drawn up in writing and shall bear the date on which it was rendered. It shall contain the names of the arbitrators and shall be signed by the president and by the members of the tribunal who have voted for it. The arbitrators may not abstain from voting.

2. Unless otherwise provided in the *compromis*, any member of the tribunal may attach his separate or dissenting opinion to the award.

3. The award shall be deemed to have been rendered when it has been read in open court, the agents of the parties being present or having been duly summoned to appear.

4. The award shall immediately be communicated to the parties.

### Article 29

The award shall, in respect of every point on which it rules, state the reasons on which it is based.

### Article 30

Once rendered, the award shall be binding upon the parties. It shall be carried out in good faith immediately, unless the tribunal has allowed a time limit for the carrying out of the award or of any part of it.

### Article 31

During a period of one month after the award has been rendered and communicated to the parties, the tribunal may, either of its own accord or at the request of either party, rectify any clerical, typographical or arithmetical error in the award, or any obvious error of a similar nature.

### Article 32

The arbitral award shall constitute a definitive settlement of the dispute.

## INTERPRETATION OF THE AWARD

### Article 33

1. Any dispute between the parties as to the meaning and scope of the award shall, at the request of either party and within three months of the rendering of the award, be referred to the tribunal which rendered the award.

2. If, for any reason, it is found impossible to submit the dispute to the tribunal which rendered the award, and if within the above-mentioned time limit the parties have not agreed upon another solution, the dispute may be referred to the International Court of Justice at the request of either party.

3. In the event of a request for interpretation, it shall be for the tribunal or for the International Court of Justice, as the case may be, to decide whether and to what extent execution of the award shall be stayed pending a decision on the request.

### Article 34

Failing a request for interpretation, or after a decision on such a request has been made, all pleadings and documents in the case shall be deposited by the president of the tribunal with the

International Bureau of the Permanent Court of Arbitration or with another depositary selected by agreement between the parties.

## VALIDITY AND ANNULMENT OF THE AWARD

### Article 35

The validity of an award may be challenged by either party on one or more of the following grounds:

- (a) That the tribunal has exceeded its powers;
- (b) That there was corruption on the part of a member of the tribunal;
- (c) That there has been a failure to state the reasons for the award or a serious departure from a fundamental rule of procedure;
- (d) That the undertaking to arbitrate or the *compromis* is a nullity.

### Article 36

1. If, within three months of the date on which the validity of the award is contested, the parties have not agreed on another tribunal, the International Court of Justice shall be competent to declare the total or partial nullity of the award on the application of either party.

2. In the cases covered by article 35, subparagraphs (a) and (c), validity must be contested within six months of the rendering of the award, and in the cases covered by subparagraphs (b) and (d) within six months of the discovery of the corruption or of the facts giving rise to the claim of nullity, and in any case within ten years of the rendering of the award.

3. The Court may, at the request of the interested party, and if circumstances so require, grant a stay of execution pending the final decision on the application for annulment.

### Article 37

If the award is declared invalid by the International Court of Justice, the dispute shall be submitted to a new tribunal constituted by agreement between the parties, or, failing such agreement, in the manner provided by article 3.

## REVISION OF THE AWARD

### Article 38

1. An application for the revision of the award may be made by either party on the ground of the discovery of some fact of such a nature as to constitute a decisive factor, provided that when the award was rendered that fact was unknown to the tribunal and to the party requesting revision, and that such ignorance was not due to the negligence of the party requesting revision.

2. The application for revision must be made within six months of the discovery of the new fact, and in any case within ten years of the rendering of the award.

3. In the proceedings for revision, the tribunal shall, in the first instance, make a finding as to the existence of the alleged new fact and rule on the admissibility of the application.

4. If the tribunal finds the application admissible, it shall then decide on the merits of the dispute.

5. The application for revision shall, whenever possible, be made to the tribunal which rendered the award.

6. If, for any reason, it is not possible to make the application to the tribunal which rendered the award, it may, unless the parties otherwise agree, be made by either of them to the International Court of Justice.

7. The tribunal or the Court may, at the request of the interested party, and if circumstances so require, grant a stay of execution pending the final decision on the application for revision.

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## **28. UNITED NATIONS MODEL RULES FOR THE CONCILIATION OF DISPUTES BETWEEN STATES**

General Assembly resolution 50/50 of 11 December 1995, annex

### **CHAPTER I. APPLICATION OF THE RULES**

#### **Article 1**

1. These rules apply to the conciliation of disputes between States where those States have expressly agreed in writing to their application.

2. The States which agree to apply these rules may at any time, through mutual agreement, exclude or amend any of their provisions.

### **CHAPTER II. INITIATION OF THE CONCILIATION PROCEEDINGS**

#### **Article 2**

1. The conciliation proceedings shall begin as soon as the States concerned (henceforth: the parties) have agreed in writing to the application of the present rules, with or without amendments, as well as on a definition of the subject of the dispute, the number and emoluments of members of the conciliation commission, its seat and the maximum duration of the proceedings, as provided in article 24. If necessary, the agreement shall contain provisions concerning the language or languages in which the proceedings are to be conducted and the linguistic services required.

2. If the States cannot reach agreement on the definition of the subject of the dispute, they may by mutual agreement request the assistance of the Secretary-General of the United Nations to resolve the difficulty. They may also by mutual agreement request his assistance to resolve any other difficulty that they may encounter in reaching an agreement on the modalities of the conciliation proceedings.

### **CHAPTER III. NUMBER AND APPOINTMENT OF CONCILIATORS**

#### **Article 3**

There may be three conciliators or five conciliators. In either case the conciliators shall form a commission.

#### **Article 4**

If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator, who may not be of its own nationality. The parties shall appoint by mutual agreement the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as president of the commission. If he is not appointed within two months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the Government of a third State chosen by agreement between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment

shall be made by the Vice-President or the next member of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside habitually in the territory of the parties or be or have been in their service.

#### **Article 5**

1. If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The other three conciliators, one of whom shall be chosen with a view to his acting as president, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall reside habitually in the territory of the parties or be or have been in their service. None of them shall have the same nationality as that of the other two conciliators.

2. If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the Government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties. The Government or member of the International Court of Justice making the appointment shall also decide which of the three conciliators shall act as president.

3. If, at the end of the three-month period referred to in the preceding paragraph, the parties have been able to appoint only one or two conciliators, the two conciliators or the conciliator still required shall be appointed in the manner described in the preceding paragraph. If the parties have not agreed that the conciliator or one of the two conciliators whom they have appointed shall act as president, the Government or member of the International Court of Justice appointing the two conciliators or the conciliator still required shall also decide which of the three conciliators shall act as president.

4. If, at the end of the three-month period referred to in paragraph 2 of this article, the parties have appointed three conciliators but have not been able to agree which of them shall act as president, the president shall be chosen in the manner described in that paragraph.

#### **Article 6**

Vacancies which may occur in the commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing the members to be replaced.

### **CHAPTER IV. FUNDAMENTAL PRINCIPLES**

#### **Article 7**

The commission, acting independently and impartially, shall endeavour to assist the parties in reaching an amicable settlement of the dispute. If no settlement is reached during the consideration of the dispute, the commission may draw up and submit appropriate recommendations to the parties for consideration.

### **CHAPTER V. PROCEDURES AND POWERS OF THE COMMISSION**

#### **Article 8**

The commission shall adopt its own procedure.

#### **Article 9**

1. Before the commission begins its work, the parties shall designate their agents and shall communicate the names of such agents to the president of the commission. The president shall

determine, in agreement with the parties, the date of the commission's first meeting, to which the members of the commission and the agents shall be invited.

2. The agents of the parties may be assisted before the commission by counsel and experts appointed by the parties.

3. Before the first meeting of the commission, its members may meet informally with the agents of the parties, if necessary, accompanied by the appointed counsel and experts to deal with administrative and procedural matters.

#### **Article 10**

1. At its first meeting, the commission shall appoint a secretary.

2. The secretary of the commission shall not have the nationality of any of the parties, shall not reside habitually in their territory and shall not be or have been in the service of any of them. He may be a United Nations official if the parties agree with the Secretary-General on the conditions under which the official will exercise these functions.

#### **Article 11**

1. As soon as the information provided by the parties so permits, the commission, having regard, in particular, to the time-limit laid down in article 24, shall decide in consultation with the parties whether the parties should be invited to submit written pleadings and, if so, in what order and within what time-limits, as well as the dates when, if necessary, the agents and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

2. Subject to the provisions of article 20, paragraph 1, the commission shall not allow the agent or counsel of one party to attend a meeting without having also given the other party the opportunity to be represented at the same meeting.

#### **Article 12**

The parties, acting in good faith, shall facilitate the commission's work and, in particular, shall provide it to the greatest possible extent with whatever documents, information and explanations may be relevant.

#### **Article 13**

1. The commission may ask the parties for whatever relevant information or documents, as well as explanations, it deems necessary or useful. It may also make comments on the arguments advanced as well as the statements or proposals made by the parties.

2. The commission may accede to any request by a party that persons whose testimony it considers necessary or useful be heard, or that experts be consulted.

#### **Article 14**

In cases where the parties disagree on issues of fact, the commission may use all means at its disposal, such as the joint expert advisers mentioned in article 15, or consultation with experts, to ascertain the facts.

#### **Article 15**

The commission may propose to the parties that they jointly appoint advisers to assist it in the consideration of technical aspects of the dispute. If the proposal is accepted, its implementation shall be conditional upon the expert advisers being appointed by the parties by mutual agreement and accepted by the commission and upon the parties fixing their emoluments.

**Article 16**

Each party may at any time, at its own initiative or at the initiative of the commission, make proposals for the settlement of the dispute. Any proposal made in accordance with this article shall be communicated immediately to the other party by the president, who may, in so doing, transmit any comment the commission may wish to make thereon.

**Article 17**

At any stage of the proceedings, the commission may, at its own initiative or at the initiative of one of the parties, draw the attention of the parties to any measures which in its opinion might be advisable or facilitate a settlement.

**Article 18**

The commission shall endeavour to take its decisions unanimously but, if unanimity proves impossible, it may take them by a majority of votes of its members. Abstentions are not allowed. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

**Article 19**

The commission may, at any time, ask the Secretary-General of the United Nations for advice or assistance with regard to the administrative or procedural aspects of its work.

**CHAPTER VI. CONCLUSION OF THE CONCILIATION PROCEEDINGS****Article 20**

1. On concluding its consideration of the dispute, the commission may, if full settlement has not been reached, draw up and submit appropriate recommendations to the parties for consideration. To that end, it may hold an exchange of views with the agents of the parties who may be heard jointly or separately.

2. The recommendations adopted by the commission shall be set forth in a report communicated by the president of the commission to the agents of the parties, with a request that the agents inform the commission, within a given period, whether the parties accept them. The president may include in the report the reasons which, in the commission's view, might prompt the parties to accept the recommendations submitted. The commission shall refrain from presenting in its report any final conclusions with regard to facts or from ruling formally on issues of law, unless the parties have jointly asked it to do so.

3. If the parties accept the recommendations submitted by the commission, a *procès-verbal* shall be drawn up setting forth the conditions of acceptance. The *procès-verbal* shall be signed by the president and the secretary. A copy thereof signed by the secretary shall be provided to each party. This shall conclude the proceedings.

4. Should the commission decide not to submit recommendations to the parties, its decision to that effect shall be recorded in a *procès-verbal* signed by the president and the secretary. A copy thereof signed by the secretary shall be provided to each party. This shall conclude the proceedings.

**Article 21**

1. The recommendations of the commission will be submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute. The parties undertake to study them in good faith, carefully and objectively.

2. If one of the parties does not accept the recommendations and the other party does, it shall inform the latter, in writing, of the reasons why it could not accept them.

**Article 22**

1. If the recommendations are not accepted by both parties but the latter wish efforts to continue in order to reach agreement on different terms, the proceedings shall be resumed. Article 24 shall apply to the resumed proceedings, with the relevant time-limit, which the parties may, by mutual agreement, shorten or extend, running from the commission's first meeting after resumption of the proceedings.

2. If the recommendations are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on different terms, a *procès-verbal* signed by the president and the secretary of the commission shall be drawn up, omitting the proposed terms and indicating that the parties were unable to accept them and do not wish further efforts to be made to reach agreement on different terms. The proceedings shall be concluded when each party has received a copy of the *procès-verbal* signed by the secretary.

**Article 23**

Upon conclusion of the proceedings, the president of the commission shall, with the prior agreement of the parties, deliver the documents in the possession of the secretariat of the commission either to the Secretary-General of the United Nations or to another person or entity agreed upon by the parties. Without prejudice to the possible application of article 26, paragraph 2, the confidentiality of the documents shall be preserved.

**Article 24**

The commission shall conclude its work within the period agreed upon by the parties. Any extension of this period shall be agreed upon by the parties.

**CHAPTER VII. CONFIDENTIALITY OF THE COMMISSION'S WORK AND DOCUMENTS****Article 25**

1. The commission's meetings shall be closed. The parties and the members and expert advisers of the commission, the agents and counsel of the parties, and the secretary and the secretariat staff, shall maintain strictly the confidentiality of any documents or statements, or any communication concerning the progress of the proceedings unless their disclosure has been approved by both parties in advance.

2. Each party shall receive, through the secretary, certified copies of any minutes of the meetings at which it was represented.

3. Each party shall receive, through the secretary, certified copies of any documentary evidence received and of experts' reports, records of investigations and statements by witnesses.

**Article 26**

1. Except with regard to certified copies referred to in article 25, paragraph 3, the obligation to respect the confidentiality of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission, expert advisers and secretariat staff after the proceedings are concluded and shall extend to recommendations and proposals which have not been accepted.

2. Notwithstanding the foregoing, the parties may, upon conclusion of the proceedings and by mutual agreement, make available to the public all or some of the documents that in accordance with the preceding paragraph are to remain confidential, or authorize the publication of all or some of those documents.

**CHAPTER VIII. OBLIGATION NOT TO ACT IN A MANNER WHICH MIGHT HAVE AN ADVERSE EFFECT ON THE CONCILIATION****Article 27**

The parties shall refrain during the conciliation proceedings from any measure which might aggravate or widen the dispute. They shall, in particular, refrain from any measures which might have an adverse effect on the recommendations submitted by the commission, so long as those recommendations have not been explicitly rejected by either of the parties.

**CHAPTER IX . PRESERVATION OF THE LEGAL POSITION OF THE PARTIES****Article 28**

1. Except as the parties may otherwise agree, neither party shall be entitled in any other proceedings, whether in a court of law or before arbitrators or before any other body, entity or person, to invoke any views expressed or statements, admissions or proposals made by the other party in the conciliation proceedings, but not accepted, or the report of the commission, the recommendations submitted by the commission or any proposal made by the commission, unless agreed to by both parties.

2. Acceptance by a party of recommendations submitted by the commission in no way implies any admission by it of the considerations of law or of fact which may have inspired the recommendations.

**CHAPTER X. COSTS****Article 29**

The costs of the conciliation proceedings and the emoluments of expert advisers appointed in accordance with article 15 shall be borne by the parties in equal shares.

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**29. PERMANENT COURT OF ARBITRATION  
ARBITRATION RULES**

Effective December 17, 2012

**Introduction**

These Rules are for use in arbitrating disputes involving at least one State, State-controlled entity, or intergovernmental organization. They add a new option for arbitration of disputes under the auspices of the Permanent Court of Arbitration (hereinafter the "PCA") without replacing the previously adopted PCA Rules, which remain valid and available. The Rules are optional and are based on the 2010 UNCITRAL Arbitration Rules with changes made in order to:

- (i) Reflect the public international law elements that may arise in disputes involving a State, State-controlled entity, and/or intergovernmental organization;
- (ii) Indicate the role of the Secretary-General and the International Bureau of the PCA; and
- (iii) Emphasize flexibility and party autonomy. For example:
  - (a) The Rules allow for arbitration of multiparty disputes involving a combination of States, State-controlled entities, intergovernmental organizations, and private parties;
  - (b) The Rules and the services of the Secretary-General and the International Bureau of the PCA are available for use by all States and their entities and enterprises, and are not restricted to disputes in which the State is a party to either the Hague

Convention for the Pacific Settlement of International Disputes of 1899 or that of 1907;

- (c) The Rules allow parties to choose an arbitral tribunal of one, three, or five persons; and
- (d) The choice of arbitrators is not limited to persons who are listed as Members of the PCA.

Model clauses that parties may consider inserting in treaties, contracts, or other agreements to provide for arbitration of existing or future disputes are set forth in the annex to these Rules.

## SECTION I. INTRODUCTORY RULES

### Scope of application\*

#### Article 1

1. Where a State, State-controlled entity, or intergovernmental organization has agreed with one or more States, State-controlled entities, intergovernmental organizations, or private parties that disputes between them in respect of a defined legal relationship, whether contractual, treaty-based, or otherwise, shall be referred to arbitration under the Permanent Court of Arbitration Arbitration Rules 2012 (hereinafter the “Rules”), then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. Agreement by a State, State-controlled entity, or intergovernmental organization to arbitrate under these Rules with a party that is not a State, State-controlled entity, or intergovernmental organization constitutes a waiver of any right of immunity from jurisdiction in respect of the proceedings relating to the dispute in question to which such party might otherwise be entitled. A waiver of immunity relating to the execution of an arbitral award must be explicitly expressed.

3. The International Bureau of the Permanent Court of Arbitration at the Hague (hereinafter the “International Bureau”) shall serve as registry for the proceedings and provide secretariat services.

4. The involvement of at least one State, State-controlled entity, or intergovernmental organization as a party to the dispute is not necessary for jurisdiction where all the parties have agreed to settle a dispute under these Rules. However, where the Secretary-General of the Permanent Court of Arbitration determines that no State, State-controlled entity, or intergovernmental organization is a party to the dispute, the Secretary-General may decide to limit the Permanent Court of Arbitration’s role in the proceedings to the function of the Secretary-General as appointing authority, with the role of the International Bureau under these Rules to be assumed by the arbitral tribunal.

### Notice and calculation of periods of time

#### Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:

- (a) Received if it is physically delivered to the addressee; or
- (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

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\* Model arbitration clauses can be found in the annex to the Rules.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

### **Notice of arbitration**

#### **Article 3**

1. The party or parties initiating recourse to arbitration (hereinafter the "claimant") shall communicate to the other party or parties (hereinafter the "respondent") and the International Bureau a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

- (a) A demand that the dispute be referred to arbitration;
- (b) The names and contact details of the parties;
- (c) Identification of the arbitration agreement that is invoked;
- (d) Identification of any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency, or relationship out of, or in relation to which, the dispute arises;
- (e) A brief description of the claim and an indication of the amount involved, if any;
- (f) The relief or remedy sought;
- (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

- (a) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
- (b) Notification of the appointment of an arbitrator referred to in articles 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

### **Response to the notice of arbitration**

#### **Article 4**

1. Within 30 days of the receipt of the notice of arbitration, or such other period as may be set by the International Bureau, the respondent shall communicate to the claimant and the International Bureau a response to the notice of arbitration, which shall include:

- (a) The name and contact details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).

2. The response to the notice of arbitration may also include:

- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
- (b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
- (c) Notification of the appointment of an arbitrator referred to in articles 9 or 10;
- (d) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
- (e) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

### **Representation and assistance**

#### **Article 5**

1. In disputes involving only States and/or intergovernmental organizations, each party shall appoint an agent. Each party may also be assisted by persons of its choice.

2. In other disputes under these Rules, each party may be represented or assisted by persons chosen by it.

3. The names and addresses of agents, party representatives, and other persons assisting the parties must be communicated to all parties, to the International Bureau, and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as an agent or representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the agent or representative in such a form as the arbitral tribunal may determine.

### **Appointing authority**

#### **Article 6**

1. The Secretary-General of the Permanent Court of Arbitration shall serve as appointing authority.

2. In exercising its functions under these Rules, the appointing authority may require from any party and the arbitrators the information it deems necessary and it shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner it considers appropriate.

3. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

## **SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL**

### **Number of arbitrators**

#### **Article 7**

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed on the number of arbitrators, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with articles 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2 if it determines that, in view of the circumstances of the case, this is more appropriate.

## **Appointment of arbitrators (articles 8 to 10)**

### **Article 8**

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal of an individual who would serve as a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;

(b) Within 15 days after the receipt of this list, or such other period as may be set by the International Bureau, each party may return the list to the appointing authority, without copying the other party, after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

(c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

### **Article 9**

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal. If five arbitrators are to be appointed, the two party-appointed arbitrators shall choose the remaining three arbitrators and designate one of those three as the presiding arbitrator of the tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator, or such other period as may be set by the International Bureau, the two arbitrators have not agreed on the choice of the remaining arbitrators and/or the presiding arbitrator, the remaining arbitrators and/or the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8, paragraph 2.

### **Article 10**

1. For the purposes of article 9, paragraph 1, where three or five arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one, three, or five, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint each of the arbitrators and designate one of them as the presiding arbitrator. The appointing authority may, if it deems it appropriate, reappoint previous appointees.

4. In appointing arbitrators pursuant to these Rules, the parties and the appointing authority are free to choose persons who are not Members of the Permanent Court of Arbitration.

### **Disclosures by and challenge of arbitrators\*\* (articles 11 to 13)**

#### **Article 11**

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

#### **Article 12**

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

4. If an arbitrator on a tribunal of three, five, or more persons fails to participate in the arbitration, the other arbitrators shall, unless the parties agree otherwise, have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of one arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling or award without the participation of an arbitrator, the other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the other arbitrators determine not to continue the arbitration without the non-participating arbitrator, the arbitral tribunal shall declare the office vacant, and, subject to article 14, paragraph 2, a substitute arbitrator shall be appointed pursuant to the provisions of articles 8 to 11, unless the parties agree on a different method of appointment.

#### **Article 13**

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 30 days after it has been notified of the appointment of the challenged arbitrator, or within 30 days after the circumstances mentioned in articles 11 and 12 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged, to the other arbitrators, and to the International Bureau. The notice of challenge shall state the reasons for the challenge.

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\*\* Model statements of independence pursuant to article 11 can be found in the annex to the Rules.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

5. In rendering a decision on the challenge, the appointing authority may indicate the reasons for the decision, unless the parties agree that no reasons shall be given.

### **Replacement of an arbitrator**

#### **Article 14**

1. Subject to paragraph 2 of this article, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views, appoint the substitute arbitrator.

### **Repetition of hearings in the event of the replacement of an arbitrator**

#### **Article 15**

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

### **Exclusion of liability**

#### **Article 16**

The parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

## **SECTION III. ARBITRAL PROCEEDINGS**

### **General provisions**

#### **Article 17**

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral

argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties and the International Bureau. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

### **Place of arbitration**

#### **Article 18**

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

### **Language**

#### **Article 19**

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

### **Statement of claim**

#### **Article 20**

1. The claimant shall communicate its statement of claim in writing to the respondent, to the International Bureau, and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:

- (a) The names and contact details of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought;
- (e) The legal grounds or arguments supporting the claim.

3. A copy of any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency, or relationship out of, or in relation to which, the dispute arises, and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

### **Statement of defence**

#### **Article 21**

1. The respondent shall communicate its statement of defence in writing to the claimant, to the International Bureau, and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4 shall apply to a counterclaim, a claim under article 4, paragraph 2(e), and a claim relied on for the purpose of a set-off.

### **Amendments to the claim or defence**

#### **Article 22**

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

### **Pleas as to the jurisdiction of the arbitral tribunal**

#### **Article 23**

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract, treaty, or other agreement shall be treated as an agreement independent of the other terms of the contract, treaty, or other agreement. A decision by the arbitral tribunal that the contract, treaty, or other agreement is null, void, or invalid shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a competent authority.

### Further written statements

#### Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

### Periods of time

#### Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

### Interim measures

#### Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
  - (a) Maintain or restore the status quo pending determination of the dispute;
  - (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
  - (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - (d) Preserve evidence that may be relevant and material to the resolution of the dispute.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:
  - (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
  - (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## Evidence

### Article 27

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine. The arbitral tribunal may also, after consultation with the parties, perform a site visit.
4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## Hearings

### Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
3. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

## Experts appointed by the arbitral tribunal

### Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on

the report. A party shall be entitled to examine any document on which the expert relied in his or her report.

5. If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of the report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

#### **Default**

##### **Article 30**

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

(a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

(b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

#### **Closure of proceedings**

##### **Article 31**

1. When it is satisfied that the parties have had a reasonable opportunity to present their cases, the arbitral tribunal shall declare the proceedings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the proceedings at any time before the award is made.

#### **Waiver of right to object**

##### **Article 32**

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

### **SECTION IV. THE AWARD**

#### **Decisions**

##### **Article 33**

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

## Form and effect of the award

### Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the International Bureau.
7. In cases involving only States, the parties shall communicate to the International Bureau the laws, regulations, or other documents evidencing the execution of the award.

## Applicable law, *amiable compositeur*

### Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall:

(a) In cases involving only States, decide such disputes in accordance with international law by applying:

- i. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- ii. International custom, as evidence of a general practice accepted as law;
- iii. The general principles of law recognized by civilized nations;
- iv. Judicial and arbitral decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(b) In cases involving only States and intergovernmental organizations, 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 intergovernmental organizations and the rules of general international law.

(c) In cases involving intergovernmental organizations and private parties, have regard both to the rules of the organization concerned and to the law applicable to the agreement or relationship out of or in relation to which the dispute arises, and, where appropriate, to the general principles governing the law of intergovernmental organizations and to the rules of general international law. In such cases, the arbitral tribunal shall decide in accordance with the terms of the agreement and shall take into account relevant trade usages.

(d) In all other cases, apply the law which it determines to be appropriate. In such cases, the arbitral tribunal shall decide in accordance with the terms of the agreement and shall take into account relevant trade usages.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.

**SETTLEMENT OR OTHER GROUNDS FOR TERMINATION****Article 36**

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5 shall apply.

**Interpretation of the award****Article 37**

1. Within 30 days after the receipt of the award, a party, with notice to the other parties and the International Bureau, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

**Correction of the award****Article 38**

1. Within 30 days after the receipt of the award, a party, with notice to the other parties and the International Bureau, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

**Additional award****Article 39**

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties and the International Bureau, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

### Definition of costs

#### Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term “costs” includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;

(b) The reasonable travel and other expenses incurred by the arbitrators;

(c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) The fees and expenses of the International Bureau, including the fees and expenses of the appointing authority.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

### Fees and expenses of arbitrators

#### Article 41

1. The costs referred to in article 40, paragraphs 2 (a), (b) and (c) shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any experts appointed by the arbitral tribunal, and any other relevant circumstances of the case.

2. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

(a) Before fixing the costs of arbitration pursuant to article 40, the arbitral tribunal shall submit its determination of the costs referred to in article 40, paragraphs 2 (a), (b) and (c), with an explanation of the manner in which the corresponding amounts have been calculated, to the appointing authority for review;

(b) If the appointing authority finds that the arbitral tribunal’s determination is inconsistent with the criteria in paragraph 1 or with the arbitral tribunal’s proposal (and any adjustments thereto) under paragraph 2, it shall make any necessary adjustments to the arbitral tribunal’s determination. Any such adjustments shall be binding upon the arbitral tribunal when it fixes the costs of arbitration pursuant to article 40.

4. Throughout the procedure under paragraphs 2 and 3 of this article, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

### Allocation of costs

#### Article 42

1. The costs of arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

### **Deposit of costs**

#### **Article 43**

1. The International Bureau, following the commencement of the arbitration, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a), (b), (c), and (f). All amounts deposited by the parties pursuant to this paragraph and paragraph 2 of this article shall be directed to the International Bureau, and disbursed by it for such costs, including, *inter alia*, fees to the arbitrators, to the appointing authority, and to the International Bureau. The International Bureau shall ensure that any disbursements of arbitral tribunal fees and expenses made prior to the fixing of the costs of arbitration pursuant to article 40 are consistent with the criteria in article 41, paragraph 1 and with the arbitral tribunal's proposal (and any adjustments thereto) under article 41, paragraph 2.

2. During the course of the arbitral proceedings the International Bureau may request supplementary deposits from the parties.

3. Any deposit of security for costs ordered by the arbitral tribunal pursuant to article 26 shall be directed to the International Bureau and disbursed by it upon order from the arbitral tribunal.

4. If the requested deposits are not paid in full within 30 days after the receipt of the request or such other period as may be set by the International Bureau, the International Bureau shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After a termination order or final award has been made, the International Bureau shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

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**ANNEX****Model arbitration clause for contracts**

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the PCA Arbitration Rules 2012.

**Model arbitration clause for treaties and other agreements**

Any dispute, controversy or claim arising out of or in relation to this [agreement] [treaty], or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the PCA Arbitration Rules 2012.

**Note — Parties should consider adding:**

- (a) The number of arbitrators shall be ... (one, three, or five);
- (b) The place of arbitration shall be ... (town and country);
- (c) The language to be used in the arbitral proceedings shall be ... .

**Possible waiver statement**

*Note — If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.*

Waiver: The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

**Model statements of impartiality and independence pursuant to article 11 of the Rules**

No circumstances to disclose: I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose: I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the PCA Arbitration Rules 2012 of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

*Note — Any party may consider requesting from the arbitrator the following addition to the statement of impartiality and independence:*

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

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## **Chapter VII**

### **INTERNATIONAL PEACE AND SECURITY**



### 30. UNITING FOR PEACE

General Assembly resolution 377 (V) of 3 November 1950

#### A

*The General Assembly,*

*Recognizing* that the first two stated Purposes of the United Nations are:

“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”, and

“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”,

*Reaffirming* that it remains the primary duty of all Members of the United Nations, when involved in an international dispute, to seek settlement of such a dispute by peaceful means through the procedures laid down in Chapter VI of the Charter, and recalling the successful achievements of the United Nations in this regard on a number of previous occasions,

*Finding* that international tension exists on a dangerous scale,

*Recalling* its resolution 290 (IV) entitled “Essentials of peace”, which states that disregard of the Principles of the Charter of the United Nations is primarily responsible for the continuance of international tension, and desiring to contribute further to the objectives of that resolution,

*Reaffirming* the importance of the exercise by the Security Council of its primary responsibility for the maintenance of international peace and security, and the duty of the permanent members to seek unanimity and to exercise restraint in the use of the veto,

*Reaffirming* that the initiative in negotiating the agreements for armed forces provided for in Article 43 of the Charter belongs to the Security Council, and desiring to ensure that, pending the conclusion of such agreements, the United Nations has at its disposal means for maintaining international peace and security,

*Conscious* that failure of the Security Council to discharge its responsibilities on behalf of all the Member States, particularly those responsibilities referred to in the two preceding paragraphs, does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security,

*Recognizing* in particular that such failure does not deprive the General Assembly of its rights or relieve it of its responsibilities under the Charter in regard to the maintenance of international peace and security,

*Recognizing* that discharge by the General Assembly of its responsibilities in these respects calls for possibilities of observation which would ascertain the facts and expose aggressors; for the existence of armed forces which could be used collectively; and for the possibility of timely recommendation by the General Assembly to Members of the United Nations for collective action which, to be effective, should be prompt,

#### A

1. *Resolves* that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach

of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations;

2. *Adopts* for this purpose the amendments to its rules of procedure set forth in the annex to the present resolution;

## B

3. *Establishes* a Peace Observation Commission which, for the calendar years 1951 and 1952, shall be composed of fourteen Members, namely: China, Colombia, Czechoslovakia, France, India, Iraq, Israel, New Zealand, Pakistan, Sweden, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay, and which could observe and report on the situation in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security. Upon the invitation or with the consent of the State into whose territory the Commission would go, the General Assembly, or the Interim Committee when the Assembly is not in session, may utilize the Commission if the Security Council is not exercising the functions assigned to it by the Charter with respect to the matter in question. Decisions to utilize the Commission shall be made on the affirmative vote of two-thirds of the members present and voting. The Security Council may also utilize the Commission in accordance with its authority under the Charter;

4. *Decides* that the Commission shall have authority in its discretion to appoint sub-commissions and to utilize the services of observers to assist it in the performance of its functions;

5. *Recommends* to all governments and authorities that they co-operate with the Commission and assist it in the performance of its functions;

6. *Requests* the Secretary-General to provide the necessary staff and facilities, utilizing, where directed by the Commission, the United Nations Panel of Field Observers envisaged in General Assembly resolution 297 B (IV);

## C

7. *Invites* each Member of the United Nations to survey its resources in order to determine the nature and scope of the assistance it may be in a position to render in support of any recommendations of the Security Council or of the General Assembly for the restoration of international peace and security;

8. *Recommends* to the States Members of the United Nations that each Member maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available, in accordance with its constitutional processes, for service as a United Nations unit or units, upon recommendation by the Security Council or the General Assembly, without prejudice to the use of such elements in exercise of the right of individual or collective self-defence recognized in Article 51 of the Charter;

9. *Invites* the Members of the United Nations to inform the Collective Measures Committee provided for in paragraph 11 as soon as possible of the measures taken in implementation of the preceding paragraph;

10. *Requests* the Secretary-General to appoint, with the approval of the Committee provided for in paragraph 11, a panel of military experts who could be made available, on request, to Member States wishing to obtain technical advice regarding the organization, training, and equipment for prompt service as United Nations units of the elements referred to in paragraph 8;

## D

11. *Establishes* a Collective Measures Committee consisting of fourteen Members, namely: Australia, Belgium, Brazil, Burma, Canada, Egypt, France, Mexico, Philippines, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela and Yugoslavia, and directs the Committee, in consultation with the Secretary-General and with such Member States as the Committee finds appropriate, to study and make a report to the Security Council and the General Assembly, not later than 1 September 1951, on methods, including those in section C of the present resolution, which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defence and regional arrangements (Articles 51 and 52 of the Charter) ;

12. *Recommends* to all Member States that they cooperate with the Committee and assist it in the performance of its functions;

13. *Requests* the Secretary-General to furnish the staff and facilities necessary for the effective accomplishment of the purposes set forth in sections C and D of the present resolution;

## E

14. *Is fully conscious* that, in adopting the proposals set forth above, enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for and observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries; and accordingly

15. *Urges* Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas.

## ANNEX

The rule of procedure of the General Assembly are amended in the following respects:

1. The present text of rule 8 shall become paragraph (a) of that rule, and a new paragraph (b) shall be added to read as follows:

“Emergency special sessions pursuant to resolution 377 A (V) shall be convened within twenty-four hours of the receipt by the Secretary-General of a request for such a session from the Security Council, on the vote of any seven members thereof, or of a request from a majority of the Members of the United Nations expressed by vote in the Interim Committee or otherwise, or of the concurrence of a majority of Members as provided in rule 9.”

2. The present text of rule 9 shall become paragraph (a) of that rule and a new paragraph (b) shall be added to read as follows:

“This rule shall apply also to a request by any Member for an emergency special session pursuant to resolution 377 A (V). In such a case the Secretary-General shall communicate with other Members by the most expeditious means of communication available.”

3. Rule 10 is amended by adding at the end thereof the following:

“ . . . In the case of an emergency special session convened pursuant to rule 8 (b), the Secretary-General shall notify the Members of the United Nations at least twelve hours in advance of the opening of the session.”

4. Rule 16 is amended by adding at the end thereof the following:

“... The provisional agenda of an emergency special session shall be communicated to the Members of the United Nations simultaneously with the communication summoning the session.”

5. Rule 19 is amended by adding at the end thereof the following:

“... During an emergency special session additional items concerning the matters dealt with in resolution 377 A (V) may be added to the agenda by a two-thirds majority of the Members present and voting.”

6. There is added a new rule to precede rule 65 to read as follows:

“Notwithstanding the provisions of any other rule and unless the General Assembly decides otherwise, the Assembly, in case of an emergency special session, shall convene in plenary session only and proceed directly to consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General Committee or to any other Committee; the President and Vice-Presidents for such emergency special sessions shall be, respectively, the Chairman of those delegations from which were elected the President and Vice-Presidents of the previous session.”

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### 31. DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

General Assembly resolution 2625 (XXV) of 24 October 1970, annex

#### Preamble

*The General Assembly,*

*Reaffirming* in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

*Recalling* that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

*Bearing in mind* the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

*Bearing in mind also* the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

*Considering* that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

*Noting* that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

*Recalling* the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occu-

pation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

*Convinced* that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

*Recalling* the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

*Considering* it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

*Considering* it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

*Reaffirming*, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

*Convinced* that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

*Convinced* that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

*Convinced* in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

*Considering* the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

*Considering* that the progressive development and codification of the following principles:

(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,

(d) The duty of States to co-operate with one another in accordance with the Charter,

(e) The principle of equal rights and self-determination of peoples,

(f) The principle of sovereign equality of States,

(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations,

*Having considered* the principles of international law relating to friendly relations and cooperation among States,

1. *Solemnly proclaims* the following principles:

**The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations**

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

- (a) Provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or
- (b) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

**The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered**

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

**The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter**

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and culture elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

**The duty of States to co-operate with one another in accordance with the Charter**

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end;

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

#### **The principle of equal rights and self-determination of peoples**

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

### **The principle of sovereign equality of States**

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

- (a) States are juridically equal;
- (b) Each State enjoys the rights inherent in full sovereignty;
- (c) Each State has the duty to respect the personality of other States;
- (d) The territorial integrity and political independence of the State are inviolable;
- (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
- (f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

### **The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter**

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

## **General Part**

### *2. Declares that:*

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

### *3. Declares further that:*

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

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## 32. DEFINITION OF AGGRESSION

General Assembly resolution 3314 (XXIX) of 14 December 1974, annex

*The General Assembly,*

*Basing itself* on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

*Recalling* that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

*Recalling also* the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

*Bearing in mind* that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

*Considering also* that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage,

*Reaffirming* the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity,

*Reaffirming also* that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof,

*Reaffirming also* the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

*Convinced* that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,

*Believing* that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

*Adopts* the following Definition of Aggression:

### Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

*Explanatory note:* In this Definition the term "State":

(a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;

(b) Includes the concept of a "group of States" where appropriate.

## Article 2

The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

## Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

## Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

## Article 5

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

## Article 6

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

## Article 7

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of

the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

#### Article 8

In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

### 33. DECLARATION ON THE ENHANCEMENT OF THE EFFECTIVENESS OF THE PRINCIPLE OF REFRAINING FROM THE THREAT OR USE OF FORCE IN INTERNATIONAL RELATIONS

General Assembly resolution 42/22 of 18 November 1987, annex

*The General Assembly,*

*Recalling* the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

*Recalling* that this principle is enshrined in Article 2, paragraph 4, of the Charter of the United Nations and has been reaffirmed in a number of international instruments,

*Reaffirming* the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Definition of Aggression and the Manila Declaration on the Peaceful Settlement of International Disputes,

*Reaffirming* the obligation to maintain international peace and security in conformity with the purposes of the United Nations,

*Expressing deep concern* at the continued existence of situations of conflict and tension and the impact of the persistence of violations of the principle of refraining from the threat or use of force on the maintenance of international peace and security, as well as at the loss of human life and material damage in the countries affected, the development of which may thereby be set back,

*Desiring* to remove the risk of new armed conflicts between States by promoting a change in the international climate from confrontation to peaceful relations and co-operation and by taking other appropriate measures to strengthen international peace and security,

*Convinced* that, in the present world situation, in which nuclear weapons exist, there is no reasonable alternative to peaceful relations among States,

*Fully aware* that the question of general and complete disarmament is of the utmost importance and that peace, security, fundamental freedoms and economic and social development are indivisible,

*Noting with concern* the pernicious impact of terrorism on international relations,

*Stressing* the need for all States to desist from any forcible action aimed at depriving peoples of their right to self-determination, freedom and independence,

*Reaffirming* the obligation of States to settle their international disputes by peaceful means,

*Conscious* of the importance of strengthening the United Nations system of collective security,

*Bearing in mind* the universal significance of human rights and fundamental freedoms as essential factors for international peace and security,

*Convinced* that States have a common interest in promoting a stable and equitable world economic environment as an essential basis for world peace and that, to that end, they should strengthen international co-operation for development and work towards a new international economic order,

*Reaffirming* the commitment of States to the basic principle of the sovereign equality of States,

*Reaffirming* the inalienable right of every State to choose its political, economic, and social and cultural systems without interference in any form by another State,

*Recalling* that States are under an obligation not to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other State,

*Reaffirming* the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

*Reaffirming* the principle of equal rights and self-determination of peoples enshrined in the Charter,

*Reaffirming that* States shall fulfil in good faith all their obligations under international law,

*Aware* of the urgent need to enhance the effectiveness of the principle that States shall refrain from the threat or use of force in order to contribute to the establishment of lasting peace and security for all States,

1. *Solemnly declares that:*

I

1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and of the Charter of the United Nations and entails international responsibility.

2. The principle of refraining from the threat or use of force in international relations is universal in character and is binding, regardless of each State's political, economic, social or cultural system or relations of alliance.

3. No consideration of whatever nature may be invoked to warrant resorting to the threat or use of force in violation of the Charter.

4. States have the duty not to urge, encourage or assist other States to resort to the threat or use of force in violation of the Charter.

5. By virtue of the principle of equal rights and self-determination enshrined in the Charter, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

6. States shall fulfil their obligations under international law to refrain from organizing, instigating, or assisting or participating in paramilitary, terrorist or subversive acts, including acts of mercenaries, in other States, or acquiescing in organized activities within their territory directed towards the commission of such acts.

7. States have the duty to abstain from armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements.

8. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.

9. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

10. Neither acquisition of territory resulting from the threat or use of force nor any occupation of territory resulting from the threat or use of force in contravention of international law will be recognized as legal acquisition or occupation.

11. A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter.

12. In conformity with the Charter and in accordance with the relevant paragraphs of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, States shall fulfil in good faith all their international obligations.

13. States have the inherent right of individual or collective self-defence if an armed attack occurs, as set forth in the Charter.

## II

14. States shall make every effort to build their international relations on the basis of mutual understanding, trust, respect and cooperation in all areas.

15. States should also promote bilateral and regional co-operation as one of the important means to enhance the effectiveness of the principle of refraining from the threat or use of force in international relations.

16. States shall abide by their commitment to the principle of peaceful settlement of disputes, which is inseparable from the principle of refraining from the threat or use of force in their international relations.

17. States parties to international disputes shall settle their disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered. For this purpose they shall utilize such means as negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice, including good offices.

18. States shall take effective measures which, by their scope and by their nature, constitute steps towards the ultimate achievement of general and complete disarmament under strict and effective international control.

19. States should take effective measures in order to prevent the danger of any armed conflicts, including those in which nuclear weapons could be used, to prevent an arms race in outer space and to halt and reverse it on Earth, to lower the level of military confrontation and to enhance global stability.

20. States should co-operate in order to undertake active efforts aimed at ensuring the relaxation of international tensions, the consolidation of the international legal order and the respect of the system of international security established by the Charter of the United Nations.

21. States should establish appropriate confidence-building measures aimed at preventing and reducing tensions and at creating a better climate among them.

22. States reaffirm that the respect for effective exercise of all human rights and fundamental freedoms and protection thereof are essential factors for international peace and security, as well as for justice and the development of friendly relations and co-operation among all States. Consequently, they should promote and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, *inter alia*, by strictly complying with their international obligations and considering, as appropriate, becoming parties to the principal international instruments in this field.

23. States shall co-operate at the bilateral, regional and international levels in order to:

- (a) Prevent and combat international terrorism;
- (b) Contribute actively to the elimination of the causes underlying international terrorism.

24. States shall endeavour to take concrete measures and promote favourable conditions in the international economic environment in order to achieve international peace, security and justice; they will take into account the interest of all in the narrowing of the differences in the levels of economic development, and in particular the interest of developing countries throughout the world.

### III

25. The competent United Nations organs should make full use of the provisions of the Charter of the United Nations in the field of the maintenance of international peace and security with a view to enhancing the effectiveness of the principle of refraining from the threat or use of force in international relations.

26. States should co-operate fully with the organs of the United Nations in supporting their action relating to the maintenance of international peace and security and to the peaceful settlement of international disputes in accordance with the Charter. In particular, they should enhance the role of the Security Council so that it can fully and effectively discharge its duties. In this regard, the permanent members of the Council have a special responsibility under the Charter.

27. States should strive to enhance the effectiveness of the collective security system through the effective implementation of the provisions of the Charter, particularly those relating to the special responsibilities of the Security Council in this regard. They should also fully discharge their obligations to support United Nations peace-keeping operations decided upon in accordance with the Charter. States shall accept and carry out the decisions of the Council in accordance with the Charter.

28. States should give the Security Council every possible type of assistance in all actions taken by it for the just settlement of crisis situations and regional conflicts. They should strengthen the part the Council can play in preventing disputes and situations the continuation of which is likely to endanger the maintenance of international peace and security. They should facilitate the task of the Council in reviewing situations of potential danger for international peace and security at as early a stage as possible.

29. The fact-finding capacity of the Security Council should be enhanced on an *ad hoc* basis in accordance with the Charter.

30. States should give full effect to the important role conferred by the Charter on the General Assembly in the area of peaceful settlement of disputes and the maintenance of international peace and security.

31. States should encourage the Secretary-General to exercise fully his functions with regard to the maintenance of international peace and security and the peaceful settlement of disputes, in accordance with the Charter, including those under Articles 98 and 99, and fully co-operate with him in this respect.

32. States should take into consideration that legal disputes should, as a general rule, be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court as an important factor for strengthening the maintenance of international peace and security. The General Assembly and the Security Council should consider making use of the provisions of the Charter concerning the possibility of requesting the Court to give an advisory opinion on any legal question.

33. States parties to regional arrangements or agencies should consider making greater use of such arrangements and agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate, pursuant to Article 52 of the Charter;

2. *Declares* that nothing in the present Declaration shall be construed as:

(a) Enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful;

(b) Prejudicing in any manner the relevant provisions of the Charter or the rights and duties of Member States or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the threat or use of force;

3. *Declares* that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration;

4. *Confirms* that, in the event of a conflict between the obligations of Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter will prevail in accordance with Article 103 of the Charter.

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### 34. DECLARATION ON THE PREVENTION AND REMOVAL OF DISPUTES AND SITUATIONS WHICH MAY THREATEN INTERNATIONAL PEACE AND SECURITY AND ON THE ROLE OF THE UNITED NATIONS IN THIS FIELD

General Assembly resolution 43/51 of 5 December 1988, annex

*The General Assembly,*

*Recognizing* the important role that the United Nations and its organs can play in the prevention and removal of International disputes and situations which may lead to international friction or give rise to an international dispute, the continuance of which may threaten the maintenance of international peace and security (hereafter; “disputes” or “situations”), within their respective functions and powers under the Charter of the United Nations,

*Convinced* that the strengthening of such a role of the United Nations will enhance its effectiveness in dealing with questions relating to the maintenance of international peace and security and in promoting the peaceful settlement of international disputes,

*Recognizing* the fundamental responsibility of States for the prevention and removal of disputes and situations,

*Recalling* that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours.

*Bearing in mind* the right of all States to resort to peaceful means of their own choice for the prevention and removal of disputes or situations,

*Reaffirming* the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Manila Declaration on the Peaceful Settlement of International Disputes and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations,

*Recalling that* it is the duty of States to refrain in their international relations from military, political, economic or any other form of coercion against the political independence or territorial integrity of any State,

*Calling upon* States to co-operate fully with the relevant organs of the United Nations and to support actions taken by them in accordance with the Charter relating to the prevention or removal of disputes and situations,

*Bearing in mind* the obligation of States to conduct their relations with other States in accordance with international law, including the principles of the United Nations,

*Reaffirming* the principle of equal rights and self-determination of peoples,

Recalling that the Charter confers on the Security Council the primary responsibility for the maintenance of international peace and security, and that Member States have agreed to accept and carry out its decisions in accordance with the Charter,

Recalling also the important role conferred by the Charter on the General Assembly and the Secretary-General in the maintenance of international peace and security,

1. Solemnly declares that:

1. States should act so as to prevent in their international relations the emergence or aggravation of disputes or situations, in particular by fulfilling in good faith their obligations under international law;

2. In order to prevent disputes or situations, States should develop their relations on the basis of the sovereign equality of States and in such a manner as to enhance the effectiveness of the collective security system through the effective implementation of the provisions of the Charter of the United Nations;

3. States should consider the use of bilateral or multilateral consultations in order better to understand each other's views, positions and interests;

4. States party to regional arrangements or members of agencies referred to in Article 52 of the Charter should make every effort to prevent or remove local disputes or situations through such arrangements and agencies;

5. States concerned should consider approaching the relevant organs of the United Nations in order to obtain advice or recommendations on preventive means for dealing with a dispute or situation;

6. Any State party to a dispute or directly concerned with a situation, particularly if it intends to request a meeting of the Security Council, should approach the Council, directly or indirectly, at an early stage and, if appropriate, on a confidential basis;

7. The Security Council should consider holding from time to time meetings, including at a high level with the participation, in particular, of Ministers for Foreign Affairs, or consultations to review the international situation and search for effective ways of improving it;

8. In the course of the preparation for the prevention or removal of particular disputes or situations, the Security Council should consider making use of the various means at its disposal, including the appointment of the Secretary-General as rapporteur for a specified question;

9. When a particular dispute or situation is brought to the attention of the Security Council without a meeting being requested, the Council should consider holding consultations with a view to examining the facts of the dispute or situation and keeping it under review, with the assistance of the Secretary-General when needed; the States concerned should have the opportunity of making their views known;

10. In such consultations, consideration should be given to employing such informal methods as the Security Council deems appropriate, including confidential contacts by its President;

11. In such consultations, the Security Council should consider, *inter alia*:

(a) Reminding the States concerned to respect their obligations under the Charter;

(b) Making an appeal to the States concerned to refrain from any action which might give rise to a dispute or lead to the deterioration of the dispute or situation;

(c) Making an appeal to the States concerned to take action which might help to remove, or to prevent the continuation or deterioration of, the dispute or situation;

12. The Security Council should consider sending, at an early stage, fact-finding or good offices missions or establishing appropriate forms of United Nations presence, including observers

and peacekeeping operations, as a means of preventing the further deterioration of the dispute or situation in the areas concerned;

13. The Security Council should consider encouraging and, where appropriate, endorsing efforts at the regional level by the States concerned or by regional arrangements or agencies to prevent or remove a dispute or situation in the region concerned;

14. Taking into consideration any procedures that have already been adopted by the States directly concerned, the Security Council should consider recommending to them appropriate procedures or methods of settlement of disputes or adjustment of situations, and such terms of settlement as it deems appropriate;

15. The Security Council, if it is appropriate for promoting the prevention and removal of disputes or situations, should, at an early stage, consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question;

16. The General Assembly should consider making use of the provisions of the Charter in order to discuss disputes or situations, when appropriate, and, in accordance with Article 11 and subject to Article 12 of the Charter, making recommendations;

17. The General Assembly should consider, where appropriate, supporting efforts undertaken at the regional level by the States concerned or by regional arrangements or agencies, to prevent or remove a dispute or situation in the region concerned;

18. If a dispute or situation has been brought before it, the General Assembly should consider including in its recommendations making more use of fact-finding capabilities, in accordance with Article 11 and subject to Article 12 of the Charter;

19. The General Assembly, if it is appropriate for promoting the prevention and removal of disputes or situations, should consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question;

20. The Secretary-General, if approached by a State or States directly concerned with a dispute or situation, should respond swiftly by urging the States to seek a solution or adjustment by peaceful means of their own choice under the Charter and by offering his good offices or other means at his disposal, as he deems appropriate;

21. The Secretary-General should consider approaching the States directly concerned with a dispute or situation in an effort to prevent it from becoming a threat to the maintenance of international peace and security;

22. The Secretary-General should, where appropriate, consider making full use of fact-finding capabilities, including, with the consent of the host State, sending a representative or fact-finding missions to areas where a dispute or a situation exists; where necessary, the Secretary-General should also consider making the appropriate arrangements;

23. The Secretary-General should be encouraged to consider using, at as early a stage as he deems appropriate, the right that is accorded to him under Article 99 of the Charter;

24. The Secretary-General should, where appropriate, encourage efforts undertaken at the regional level to prevent or remove a dispute or situation in the region concerned;

25. Should States fail to prevent the emergence or aggravation of a dispute or situation, they shall continue to seek a settlement by peaceful means in accordance with the Charter;

2. *Declares* that nothing in the present Declaration shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7, thereof, or the rights and duties of States, or the scope of the functions and the powers of United Nations

organs under the Charter, in particular those relating to the maintenance of international peace and security;

3. *Also declares* that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial or racist regimes or other forms of alien domination.

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## **Chapter VIII**

### **INTERNATIONAL HUMAN RIGHTS LAW**



## Main instruments

### 35. UNIVERSAL DECLARATION OF HUMAN RIGHTS

General Assembly resolution 217 A (III) of 10 December 1948

#### Preamble

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

*Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

*Whereas* it is essential to promote the development of friendly relations between nations,

*Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

*Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

*Now, therefore,*

*The General Assembly*

*Proclaims* this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

#### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

#### Article 3

Everyone has the right to life, liberty and the security of person.

**Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17**

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

**Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

**Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the

rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

### Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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## 36. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Done at New York on 7 March 1966

Entry into force: 4 January 1969

United Nations, *Treaty Series*, vol. 660, p. 195; Reg. No. 9464

*The States Parties to this Convention,*

*Considering* that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in cooperation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

*Considering* that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

*Considering* that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

*Considering* that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

*Convinced* that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

*Reaffirming* that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

*Convinced* that the existence of racial barriers is repugnant to the ideals of any human society,

*Alarmed* by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

*Resolved* to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

*Bearing in mind* the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organization in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

*Desiring* to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

*Have agreed* as follows:

## PART I

### Article 1

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

### Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### **Article 3**

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

### **Article 4**

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

### **Article 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;

(c) Political rights, in particular the right to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

- (i) The right to freedom of movement and residence within the border of the State;
- (ii) The right to leave any country, including one's own, and to return to one's country;
- (iii) The right to nationality;
- (iv) The right to marriage and choice of spouse;

- (v) The right to own property alone as well as in association with others;
- (vi) The right to inherit;
- (vii) The right to freedom of thought, conscience and religion;
- (viii) The right to freedom of opinion and expression;
- (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

#### **Article 6**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

#### **Article 7**

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

### **PART II**

#### **Article 8**

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;

(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

#### **Article 9**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

#### **Article 10**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

#### **Article 11**

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

### **Article 12**

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

### **Article 13**

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

#### **Article 14**

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

#### **Article 15**

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

#### **Article 16**

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

### **PART III**

#### **Article 17**

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 18**

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 19**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 20**

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

**Article 21**

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

**Article 22**

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

**Article 23**

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 24**

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

**Article 25**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

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### 37. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Done at New York on 16 December 1966

Entry into force: 3 January 1976

United Nations, *Treaty Series*, vol. 993, p. 3; Reg. No. 14531

#### Preamble

*The States Parties to the present Covenant,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that these rights derive from the inherent dignity of the human person,

*Recognizing* that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

*Agree* upon the following articles:

#### PART I

##### Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

#### Part II

##### Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

#### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

#### **Article 4**

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

#### **Article 5**

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **PART III**

#### **Article 6**

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

#### **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

**Article 8**

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

**Article 9**

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

**Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

**Article 11**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

### **Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### **Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### **Article 15**

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

### **PART IV**

#### **Article 16**

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies insofar as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

#### **Article 17**

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

#### **Article 18**

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

#### **Article 19**

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

#### **Article 20**

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

#### **Article 21**

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

#### **Article 22**

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

#### **Article 23**

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

#### **Article 24**

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

**Article 25**

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**PART V****Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

**Article 27**

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 28**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

**Article 29**

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

### **Article 30**

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

### **Article 31**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

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## **37.(a) OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

Done at New York on 10 December 2008

Entry into force: 5 May 2013

United Nations, *Treaty Series*, Reg. No. 14531

### **Preamble**

*The States Parties to the present Protocol,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Noting* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

*Recalling* that the Universal Declaration of Human Rights and the International Covenants on Human Rights recognize that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural, economic, political and social rights,

*Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

*Recalling* that each State Party to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as “the Covenant”) undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures,

*Considering* that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it would be appropriate to enable the Committee on Economic, Social and Cultural Rights (hereinafter referred to as “the Committee”) to carry out the functions provided for in the present Protocol,

*Have agreed* as follows:

#### **Article 1. Competence of the Committee to receive and consider communications**

1. A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.

2. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

#### **Article 2. Communications**

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

#### **Article 3. Admissibility**

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.

2. The Committee shall declare a communication inadmissible when:

(a) It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;

(b) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;

(c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(d) It is incompatible with the provisions of the Covenant;

(e) It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;

(f) It is an abuse of the right to submit a communication; or when

(g) It is anonymous or not in writing.

#### **Article 4. Communications not revealing a clear disadvantage**

The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.

#### **Article 5. Interim measures**

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

#### **Article 6. Transmission of the communication**

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

#### **Article 7. Friendly settlement**

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of the respect for the obligations set forth in the Covenant.

2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol.

#### **Article 8. Examination of communications**

1. The Committee shall examine communications received under article 2 of the present Protocol in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. When examining a communication under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including from regional human rights systems, and any observations or comments by the State Party concerned.

4. When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

#### **Article 9. Follow-up to the views of the Committee**

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

2. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under articles 16 and 17 of the Covenant.

#### **Article 10. Inter-State communications**

1. A State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. Communications under the present article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Com-

mittee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under the present article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Protocol considers that another State Party is not fulfilling its obligations under the Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication, the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not settled to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Covenant;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, with all due expediency after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

- (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. A declaration under paragraph 1 of the present article shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### **Article 11. Inquiry procedure**

1. A State Party to the present Protocol may at any time declare that it recognizes the competence of the Committee provided for under the present article.
2. If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
3. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.
4. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.
5. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
6. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
7. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report provided for in article 15 of the present Protocol.
8. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

#### **Article 12. Follow-up to the inquiry procedure**

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 11 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 11, paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

#### **Article 13. Protection measures**

A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

#### **Article 14. International assistance and cooperation**

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, along with the State Party's observations and suggestions, if any, on these views or recommendations.
2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.

3. A trust fund shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the Financial Regulations and Rules of the United Nations, with a view to providing expert and technical assistance to States Parties, with the consent of the State Party concerned, for the enhanced implementation of the rights contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights in the context of the present Protocol.

4. The provisions of the present article are without prejudice to the obligations of each State Party to fulfil its obligations under the Covenant.

#### **Article 15. Annual report**

The Committee shall include in its annual report a summary of its activities under the present Protocol.

#### **Article 16. Dissemination and information**

Each State Party undertakes to make widely known and to disseminate the Covenant and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party, and to do so in accessible formats for persons with disabilities.

#### **Article 17. Signature, ratification and accession**

1. The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 18. Entry into force**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Protocol after the deposit of the tenth instrument of ratification or accession, the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or accession.

#### **Article 19. Amendments**

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. There-

after, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

#### **Article 20. Denunciation**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 2 and 10 or to any procedure initiated under article 11 before the effective date of denunciation.

#### **Article 21. Notification by the Secretary-General**

The Secretary-General of the United Nations shall notify all States referred to in article 26, paragraph 1, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 19;
- (c) Any denunciation under article 20.

#### **Article 22. Official languages**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 26 of the Covenant.

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## **38. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Done at New York on 16 December 1966

Entry into force: 23 March 1976

United Nations, *Treaty Series*, vol. 999, p. 171; Reg No. 14668

#### **Preamble**

*The States Parties to the present Covenant,*

*Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,*

*Recognizing that these rights derive from the inherent dignity of the human person,*

*Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,*

*Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,*

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

## **PART I**

### **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### **Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### **Article 4**

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

#### **Article 5**

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **PART III**

#### **Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### **Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### **Article 8**

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

- (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
  - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
  - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - (iv) Any work or service which forms part of normal civil obligations.

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

#### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health

or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

### Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

#### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

#### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

#### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

#### **Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### **Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

### **PART IV**

#### **Article 28**

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

#### **Article 29**

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

#### **Article 30**

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquar-

ters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

#### **Article 31**

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

#### **Article 32**

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

#### **Article 33**

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

#### **Article 34**

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

#### **Article 35**

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

**Article 36**

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

**Article 37**

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

**Article 38**

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

**Article 39**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

**Article 40**

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

**Article 41**

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present

Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### **Article 42**

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States

Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

### Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts

on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 44**

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### **Article 45**

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

### **PART V**

#### **Article 46**

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

#### **Article 47**

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

### **PART VI**

#### **Article 48**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

#### **Article 49**

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 50**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

**Article 51**

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

**Article 52**

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

**Article 53**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

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### **38.(a) OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Done at New York on 16 December 1966

Entry into force: 23 March 1976

United Nations, *Treaty Series*, vol. 999, p. 171; Reg No. 14668

*The States Parties to the present Protocol,*

*Considering* that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,

*Have agreed* as follows:

#### **Article 1**

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

#### **Article 2**

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

#### **Article 3**

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

#### **Article 4**

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

#### **Article 5**

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

#### **Article 6**

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

#### **Article 7**

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

#### **Article 8**

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### **Article 9**

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### **Article 10**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 11**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference,

the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

#### **Article 12**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

#### **Article 13**

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under article 8;
- (b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
- (c) Denunciations under article 12.

#### **Article 14**

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

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### **38.(b) SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY**

Done at New York on 15 December 1989

Entry into force: 11 July 1991

United Nations, *Treaty Series*, vol. 1642, p. 414; Reg. No. 14668

*The States Parties to the present Protocol,*

*Believing* that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

*Recalling* article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

*Noting* that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

*Convinced* that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

*Desirous* to undertake hereby an international commitment to abolish the death penalty,

*Have agreed* as follows:

#### **Article 1**

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

#### **Article 2**

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

#### **Article 3**

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

#### **Article 4**

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

#### **Article 5**

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

#### **Article 6**

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

#### **Article 7**

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### **Article 8**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

#### **Article 9**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 10**

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

#### **Article 11**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

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### 39. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Done at New York on 18 December 1979

Entry into force: 3 September 1981

United Nations, *Treaty Series*, vol. 1249, p. 13; Reg. No. 20378

*The States Parties to the present Convention,*

*Noting* that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

*Noting* that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

*Noting* that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

*Considering* the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

*Noting also* the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

*Concerned*, however, that despite these various instruments extensive discrimination against women continues to exist,

*Recalling* that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

*Concerned* that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

*Convinced* that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

*Emphasizing* that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neocolonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

*Affirming* that the strengthening of international peace and security, the relaxation of international tension, mutual cooperation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

*Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

*Bearing in mind* the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

*Aware* that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

*Determined* to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

*Have agreed* on the following:

## **PART I**

### **Article 1**

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

### **Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

**Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

**Article 5**

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

**Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

**PART II****Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

**Article 8**

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

**Article 9**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

**PART III****Article 10**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student dropout rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

**Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

#### **Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### **Article 13**

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### **Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health-care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

## PART IV

### Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

### Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## PART V

### Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall

serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

#### **Article 18**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- (a) Within one year after the entry into force for the State concerned;
- (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

#### **Article 19**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

#### **Article 20**

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

#### **Article 21**

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

#### **Article 22**

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

### **PART VI**

#### **Article 23**

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

#### **Article 24**

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

#### **Article 25**

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 26**

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 27**

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

**Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 30**

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

*In witness whereof* the undersigned, duly authorized, have signed the present Convention.

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### 39.(a) OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Done at New York on 6 October 1999

Entry into force: 22 December 2000

United Nations, *Treaty Series*, vol. 2131, p. 83; Reg. No. 20378

*The States Parties to the present Protocol,*

*Noting* that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

*Also noting* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

*Recalling* that the International Covenants on Human Rights and other international human rights instruments prohibit discrimination on the basis of sex,

*Also recalling* the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

*Reaffirming* their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

*Have agreed as follows:*

#### Article 1

A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Elimination of Discrimination against Women (“the Committee”) to receive and consider communications submitted in accordance with article 2.

#### Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

#### Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

#### Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The Committee shall declare a communication inadmissible where:

(a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(b) It is incompatible with the provisions of the Convention;

- (c) It is manifestly ill-founded or not sufficiently substantiated;
- (d) It is an abuse of the right to submit a communication;
- (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

#### **Article 5**

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

#### **Article 6**

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

#### **Article 7**

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

#### **Article 8**

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

#### **Article 9**

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

#### **Article 10**

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.

2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

#### **Article 11**

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

#### **Article 12**

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

#### **Article 13**

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

#### **Article 14**

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

#### **Article 15**

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.

2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 16**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

#### **Article 17**

No reservations to the present Protocol shall be permitted.

#### **Article 18**

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

#### **Article 19**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

#### **Article 20**

The Secretary-General of the United Nations shall inform all States of:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 18;
- (c) Any denunciation under article 19.

#### **Article 21**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.

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## 40. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Done at New York on 10 December 1984

Entry into force: 26 June 1987

United Nations, *Treaty Series*, vol. 1465, p. 85; Reg. No. 24841

*The States Parties to this Convention,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that those rights derive from the inherent dignity of the human person,

*Considering* the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Having regard* to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

*Having regard also* to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

*Desiring* to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

*Have agreed* as follows:

### PART I

#### Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

#### Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

#### Article 3

1. No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

#### **Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

#### **Article 5**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### **Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

#### **Article 7**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, para-

graph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

#### **Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### **Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### **Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

#### **Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

#### **Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

#### **Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly

and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

#### **Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

#### **Article 15**

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

#### **Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

### **PART II**

#### **Article 17**

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all

persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

### Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

### Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

**Article 20**

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the cooperation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the cooperation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

**Article 21**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the

basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

### **Article 23**

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

## **PART III**

### **Article 25**

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### **Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### **Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

### **Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

### Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

### Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

### Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

### Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

- (c) Denunciations under article 31.

### Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

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## 40.(a) OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Done at New York on 18 December 2002

Entry into force: 22 June 2006

United Nations, *Treaty Series*, vol. 2375, p. 237; Reg. No. 24841

### Preamble

*The States Parties to the present Protocol,*

*Reaffirming* that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

*Convinced* that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

*Recalling* that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

*Recognizing* that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

*Recalling* that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

*Recalling* also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

*Convinced* that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

*Have agreed* as follows:

## **PART I. GENERAL PRINCIPLES**

### **Article 1**

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

### **Article 2**

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

### **Article 3**

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

### **Article 4**

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

## **PART II. SUBCOMMITTEE ON PREVENTION**

### **Article 5**

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

#### Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

#### Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

### Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

### Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

### Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, *inter alia*, that:

- (a) Half the members plus one shall constitute a quorum;
- (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
- (c) The Subcommittee on Prevention shall meet *in camera*.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

## PART III. MANDATE OF THE SUBCOMMITTEE ON PREVENTION

### Article 11

The Subcommittee on Prevention shall:

- (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) In regard to the national preventive mechanisms:
  - (i) Advise and assist States Parties, when necessary, in their establishment;
  - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
  - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
  - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mecha-

nisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working toward the strengthening of the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment.

#### **Article 12**

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

#### **Article 13**

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

#### **Article 14**

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

#### **Article 15**

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

#### **Article 16**

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

### **PART IV: NATIONAL PREVENTIVE MECHANISMS**

#### **Article 17**

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

#### **Article 18**

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

#### **Article 19**

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

#### **Article 20**

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

#### **Article 21**

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

#### **Article 22**

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

#### **Article 23**

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

## **PART V. DECLARATION**

### **Article 24**

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

## **PART VI. FINANCIAL PROVISIONS**

### **Article 25**

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

### **Article 26**

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

## **PART VII. FINAL PROVISIONS**

### **Article 27**

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

### **Article 28**

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

**Article 29**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

**Article 30**

No reservations shall be made to the present Protocol.

**Article 31**

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

**Article 32**

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

**Article 33**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

**Article 34**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

### Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

### Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

### Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

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## 41. CONVENTION ON THE RIGHTS OF THE CHILD

Done at New York on 20 November 1989

Entry into force: 2 September 1990

United Nations, *Treaty Series*, vol. 1577, p. 3; Reg. No. 27531

### Preamble

*The States Parties to the present Convention,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Bearing in mind* that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

*Recognizing* that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

*Recalling* that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

*Convinced* that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

*Recognizing* that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

*Considering* that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

*Bearing in mind* that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

*Bearing in mind* that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

*Recalling* the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

*Recognizing* that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

*Taking due account* of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

*Recognizing* the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

*Have agreed* as follows:

## **PART I**

### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians,

or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

#### **Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

#### **Article 6**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

#### **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

#### Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

**Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

**Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

#### Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable

rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

### **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate prenatal and postnatal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutri-

tion, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### **Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

#### **Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

#### **Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of dropout rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

### **Article 29**

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

### **Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

**Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

**Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

**Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

**Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**Article 37**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- (i) To be presumed innocent until proved guilty according to law;
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

#### **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

### **PART II**

#### **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

#### **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating

States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

#### **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

**Article 45**

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

**PART III****Article 46**

The present Convention shall be open for signature by all States.

**Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

#### **Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

#### **Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

#### **Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### **Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

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## 41.(a) OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Done at New York on 25 May 2000

Entry into force: 12 February 2002

United Nations, *Treaty Series*, vol. 2173, p. 222; Reg. No. 27531

*The States Parties to the present Protocol,*

*Encouraged* by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

*Reaffirming* that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

*Disturbed* by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

*Condemning* the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

*Noting* the adoption of the Statute of the International Criminal Court and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

*Considering*, therefore, that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

*Noting* that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

*Convinced* that an optional protocol to the Convention raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

*Noting* that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

*Welcoming* the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

*Condemning with the gravest concern* the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

*Recalling* the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

*Stressing* that this Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

*Bearing in mind* that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are

indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

*Recognizing* the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

*Mindful* of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

*Convinced* of the need to strengthen international cooperation in the implementation of this Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

*Encouraging* the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

*Have agreed* as follows:

#### **Article 1**

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

#### **Article 2**

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

#### **Article 3**

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
- (b) Such recruitment is done with the informed consent of the person's parents or legal guardians;
- (c) Such persons are fully informed of the duties involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

**Article 4**

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

**Article 5**

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

**Article 6**

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

**Article 7**

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

**Article 8**

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

**Article 9**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

#### **Article 10**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

#### **Article 11**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

#### **Article 12**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

#### **Article 13**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

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#### 41.(b) OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Done at New York on 25 May 2000

Entry into force: 18 January 2002

United Nations, *Treaty Series*, vol. 2171, p. 227; Reg. No. 27531

*The States Parties to the present Protocol,*

*Considering* that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

*Considering also* that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

*Gravely concerned* at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

*Deeply concerned* at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

*Recognizing* that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

*Concerned* about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

*Believing* that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socioeconomic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

*Believing* that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

*Noting* the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

*Encouraged* by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

### **Article 1**

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

### **Article 2**

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

### **Article 3**

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

#### **Article 4**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### **Article 5**

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

#### **Article 6**

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

#### **Article 7**

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
  - (i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol;
  - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

#### **Article 8**

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

**Article 9**

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

**Article 10**

1. States Parties shall take all necessary steps to strengthen international cooperation by multi-lateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

**Article 11**

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

**Article 12**

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

#### **Article 13**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 14**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

#### **Article 15**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

#### **Article 16**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

#### **Article 17**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

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## 41.(c) OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE

Done at New York on 19 December 2011

Entry into force: 14 April 2014

United Nations, *Treaty Series*, Reg. No. 27531

*The States parties to the present Protocol,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Noting* that the States parties to the Convention on the Rights of the Child (hereinafter referred to as “the Convention”) recognize the rights set forth in it to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,

*Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

*Reaffirming also* the status of the child as a subject of rights and as a human being with dignity and with evolving capacities,

*Recognizing* that children’s special and dependent status may create real difficulties for them in pursuing remedies for violations of their rights,

*Considering* that the present Protocol will reinforce and complement national and regional mechanisms allowing children to submit complaints for violations of their rights,

*Recognizing* that the best interests of the child should be a primary consideration to be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels,

*Encouraging* States parties to develop appropriate national mechanisms to enable a child whose rights have been violated to have access to effective remedies at the domestic level,

*Recalling* the important role that national human rights institutions and other relevant specialized institutions, mandated to promote and protect the rights of the child, can play in this regard,

*Considering* that, in order to reinforce and complement such national mechanisms and to further enhance the implementation of the Convention and, where applicable, the Optional Protocols thereto on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, it would be appropriate to enable the Committee on the Rights of the Child (hereinafter referred to as “the Committee”) to carry out the functions provided for in the present Protocol,

*Have agreed* as follows:

### PART I. GENERAL PROVISIONS

#### Article 1. Competence of the Committee on the Rights of the Child

1. A State party to the present Protocol recognizes the competence of the Committee as provided for by the present Protocol.
2. The Committee shall not exercise its competence regarding a State party to the present Protocol on matters concerning violations of rights set forth in an instrument to which that State is not a party.
3. No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol.

### **Article 2. General principles guiding the functions of the Committee**

In fulfilling the functions conferred on it by the present Protocol, the Committee shall be guided by the principle of the best interests of the child. It shall also have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child.

### **Article 3. Rules of procedure**

1. The Committee shall adopt rules of procedure to be followed when exercising the functions conferred on it by the present Protocol. In doing so, it shall have regard, in particular, for article 2 of the present Protocol in order to guarantee child-sensitive procedures.

2. The Committee shall include in its rules of procedure safeguards to prevent the manipulation of the child by those acting on his or her behalf and may decline to examine any communication that it considers not to be in the child's best interests.

### **Article 4. Protection measures**

1. A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.

2. The identity of any individual or group of individuals concerned shall not be revealed publicly without their express consent.

## **PART II. COMMUNICATIONS PROCEDURE**

### **Article 5. Individual communications**

1. Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party:

- (a) The Convention;
- (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
- (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.

2. Where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

### **Article 6. Interim measures**

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

### **Article 7. Admissibility**

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication is not in writing;

(c) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or the Optional Protocols thereto;

(d) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(e) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;

(f) The communication is manifestly ill-founded or not sufficiently substantiated;

(g) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date;

(h) The communication is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit.

#### **Article 8. Transmission of the communication**

1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State party concerned as soon as possible.

2. The State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. The State party shall submit its response as soon as possible and within six months.

#### **Article 9. Friendly settlement**

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the obligations set forth in the Convention and/or the Optional Protocols thereto.

2. An agreement on a friendly settlement reached under the auspices of the Committee closes consideration of the communication under the present Protocol.

#### **Article 10. Consideration of communications**

1. The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications received under the present Protocol.

3. Where the Committee has requested interim measures, it shall expedite the consideration of the communication.

4. When examining communications alleging violations of economic, social or cultural rights, the Committee shall consider the reasonableness of the steps taken by the State party in accordance with article 4 of the Convention. In doing so, the Committee shall bear in mind that the State party may adopt a range of possible policy measures for the implementation of the economic, social and cultural rights in the Convention.

5. After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

#### **Article 11. Follow-up**

1. The State party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee a written response, including infor-

mation on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party shall submit its response as soon as possible and within six months.

2. The Committee may invite the State party to submit further information about any measures the State party has taken in response to its views or recommendations or implementation of a friendly settlement agreement, if any, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

### **Article 12. Inter-State communications**

1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under any of the following instruments to which the State is a party:

- (a) The Convention;
- (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
- (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.

2. The Committee shall not receive communications concerning a State party that has not made such a declaration or communications from a State party that has not made such a declaration.

3. The Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Convention and the Optional Protocols thereto.

4. A declaration under paragraph 1 of the present article shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communications by any State party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.

## **PART III. INQUIRY PROCEDURE**

### **Article 13. Inquiry procedure for grave or systematic violations**

1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.

3. Such an inquiry shall be conducted confidentially, and the cooperation of the State party shall be sought at all stages of the proceedings.

4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned, together with any comments and recommendations.

5. The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 16 of the present Protocol.

7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.

8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.

#### **Article 14. Follow-up to the inquiry procedure**

1. The Committee may, if necessary, after the end of the period of six months referred to in article 13, paragraph 5, invite the State party concerned to inform it of the measures taken and envisaged in response to an inquiry conducted under article 13 of the present Protocol.

2. The Committee may invite the State party to submit further information about any measures that the State party has taken in response to an inquiry conducted under article 13, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

### **PART IV. FINAL PROVISIONS**

#### **Article 15. International assistance and cooperation**

1. The Committee may transmit, with the consent of the State party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, together with the State party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State party concerned, any matter arising out of communications considered under the present Protocol that may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States parties in achieving progress in the implementation of the rights recognized in the Convention and/or the Optional Protocols thereto.

#### **Article 16. Report to the General Assembly**

The Committee shall include in its report submitted every two years to the General Assembly in accordance with article 44, paragraph 5, of the Convention a summary of its activities under the present Protocol.

#### **Article 17. Dissemination of and information on the Optional Protocol**

Each State party undertakes to make widely known and to disseminate the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular with regard to matters involving the State party, by appropriate and active means and in accessible formats to adults and children alike, including those with disabilities.

### **Article 18. Signature, ratification and accession**

1. The present Protocol is open for signature to any State that has signed, ratified or acceded to the Convention or either of the first two Optional Protocols thereto.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

### **Article 19. Entry into force**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

### **Article 20. Violations occurring after the entry into force**

1. The Committee shall have competence solely in respect of violations by the State party of any of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol.
2. If a State becomes a party to the present Protocol after its entry into force, the obligations of that State vis-a-vis the Committee shall relate only to violations of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol for the State concerned.

### **Article 21. Amendments**

1. Any State party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States parties with a request to be notified whether they favour a meeting of States parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of the States parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and, thereafter, to all States parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States parties that have accepted it.

### **Article 22. Denunciation**

1. Any State party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 5 or 12 or any inquiry initiated under article 13 before the effective date of denunciation.

**Article 23. Depositary and notification by the Secretary-General**

1. The Secretary-General of the United Nations shall be the depositary of the present Protocol.
2. The Secretary-General shall inform all States of:
  - (a) Signatures, ratifications and accessions under the present Protocol;
  - (b) The date of entry into force of the present Protocol and of any amendment thereto under article 21;
  - (c) Any denunciation under article 22 of the present Protocol.

**Article 24. Languages**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

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## 42. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Done at New York on 18 December 1990

Entry into force: 1 July 2003

United Nations, *Treaty Series*, vol. 2220, p. 3; Reg. No. 39481

**Preamble**

*The States Parties to the present Convention,*

*Taking into account* the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

*Taking into account also* the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organization, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No. 151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105),

*Reaffirming* the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

*Recalling* the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime

and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

*Recalling* that one of the objectives of the International Labour Organization, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

*Recognizing* the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

*Recognizing also* the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

*Realizing* the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

*Aware* of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

*Considering* the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

*Convinced* that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

*Taking into account* the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

*Bearing in mind* that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

*Considering* that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

*Considering also* that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

*Convinced*, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

*Have agreed as follows:*

## **PART I. SCOPE AND DEFINITIONS**

### **Article 1**

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, lan-

guage, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

### Article 2

For the purposes of the present Convention:

1. The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2. (a) The term “frontier worker” refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

(b) The term “seasonal worker” refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term “seafarer”, which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;

(d) The term “worker on an offshore installation” refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

(e) The term “itinerant worker” refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(f) The term “project-tied worker” refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(g) The term “specified-employment worker” refers to a migrant worker:

- (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
- (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
- (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;

and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;

(h) The term “self-employed worker” refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

### Article 3

The present Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other cooperation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

(f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

#### **Article 4**

For the purposes of the present Convention the term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

#### **Article 5**

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

#### **Article 6**

For the purposes of the present Convention:

(a) The term “State of origin” means the State of which the person concerned is a national;

(b) The term “State of employment” means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term “State of transit” means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

## **PART II. NON-DISCRIMINATION WITH RESPECT TO RIGHTS**

#### **Article 7**

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

**PART III. HUMAN RIGHTS OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES**

**Article 8**

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

**Article 9**

The right to life of migrant workers and members of their families shall be protected by law.

**Article 10**

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 11**

1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of the present article the term “forced or compulsory labour” shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

**Article 12**

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.

2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.

3. Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputation of others;
- (b) For the protection of the national security of the States concerned or of public order (*ordre public*) or of public health or morals;
- (c) For the purpose of preventing any propaganda for war;
- (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

### Article 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

### Article 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

### Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guaran-

tees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

#### **Article 17**

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, insofar as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.

7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

**Article 18**

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

(a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;

(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(c) To be tried without undue delay;

(d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;

(e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;

(g) Not to be compelled to testify against themselves or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

**Article 19**

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

**Article 20**

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

**Article 21**

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

**Article 22**

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

**Article 23**

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a

State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

#### Article 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

#### Article 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by this term;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

#### Article 26

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.

#### Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals insofar as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

**Article 28**

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

**Article 29**

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

**Article 30**

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public preschool educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

**Article 31**

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.

2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

**Article 32**

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

**Article 33**

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

(a) Their rights arising out of the present Convention;

(b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.

2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall cooperate with other States concerned.

3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

**Article 34**

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

### Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part VI of the present Convention.

## PART IV. OTHER RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION

### Article 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

### Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

### Article 38

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

### Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

### Article 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.

**Article 41**

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

**Article 42**

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

**Article 43**

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

(a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and placement services;

(c) Access to vocational training and retraining facilities and institutions;

(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

(e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

(f) Access to cooperatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;

(g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

**Article 44**

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have

with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

#### **Article 45**

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

#### **Article 46**

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(a) Upon departure from the State of origin or State of habitual residence;

(b) Upon initial admission to the State of employment;

(c) Upon final departure from the State of employment;

(d) Upon final return to the State of origin or State of habitual residence.

#### **Article 47**

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

#### **Article 48**

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

(a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

(b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

#### **Article 49**

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

#### **Article 50**

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.

3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

#### **Article 51**

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

#### **Article 52**

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

### **Article 53**

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

### **Article 54**

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

(a) Protection against dismissal;

(b) Unemployment benefits;

(c) Access to public work schemes intended to combat unemployment;

(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

### **Article 55**

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

### Article 56

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.

2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

## PART V. PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

### Article 57

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part III and, except as modified below, the rights set forth in part IV.

### Article 58

1. Frontier workers, as defined in article 2, paragraph 2 (*a*), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

### Article 59

1. Seasonal workers, as defined in article 2, paragraph 2 (*b*), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

### Article 60

Itinerant workers, as defined in article 2, paragraph 2 (*e*), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

### Article 61

1. Project-tied workers, as defined in article 2, paragraph 2 (*f*) of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs 1 (*b*) and (*c*), article 43, paragraph 1 (*d*), as it pertains to social housing schemes, article 45, paragraph 1 (*b*), and articles 52 to 55.

2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

### **Article 62**

1. Specified-employment workers, as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs 1 (b) and (c), article 43, paragraph 1 (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

### **Article 63**

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.

2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

## **PART VI. PROMOTION OF SOUND, EQUITABLE, HUMANE AND LAWFUL CONDITIONS IN CONNECTION WITH INTERNATIONAL MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES**

### **Article 64**

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and cooperate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

### **Article 65**

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

- (a) The formulation and implementation of policies regarding such migration;
- (b) An exchange of information, consultation and cooperation with the competent authorities of other States Parties involved in such migration;

(c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

(d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

#### **Article 66**

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

- (a) Public services or bodies of the State in which such operations take place;
- (b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;
- (c) A body established by virtue of a bilateral or multilateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

#### **Article 67**

1. States Parties concerned shall cooperate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall cooperate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

#### **Article 68**

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

- (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
- (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
- (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropri-

ate, sanctions on employers of such workers. The rights of migrant workers vis-a-vis their employer arising from employment shall not be impaired by these measures.

#### **Article 69**

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

#### **Article 70**

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

#### **Article 71**

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.

2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

### **PART VII. APPLICATION OF THE CONVENTION**

#### **Article 72**

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

(b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month

before the date of the corresponding election, together with the *curricula vitae* of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 73**

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

### **Article 74**

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organization. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

#### **Article 75**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

#### **Article 76**

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

- (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

### **Article 77**

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

### **Article 78**

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

## **PART VIII. GENERAL PROVISIONS**

### **Article 79**

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

### **Article 80**

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

**Article 81**

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

- (a) The law or practice of a State Party; or
- (b) Any bilateral or multilateral treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

**Article 82**

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or forgoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

**Article 83**

Each State Party to the present Convention undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

**Article 84**

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

**PART IX. FINAL PROVISIONS****Article 85**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

**Article 86**

1. The present Convention shall be open for signature by all States. It is subject to ratification.
2. The present Convention shall be open to accession by any State.
3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

**Article 87**

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

#### **Article 88**

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

#### **Article 89**

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.

3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

#### **Article 90**

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

#### **Article 91**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

### Article 92

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

### Article 93

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

## 43. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Done at New York on 13 December 2006

Entry into force: 3 May 2008

United Nations, *Treaty Series*, vol. 2515, p. 3; Reg. No. 44910

### Preamble

The States Parties to the present Convention,

(a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) *Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) *Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) *Recognizing* that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) *Recognizing* the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) *Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(h) *Recognizing also* that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) *Recognizing further* the diversity of persons with disabilities,

(j) *Recognizing* the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) *Concerned* that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) *Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) *Recognizing* the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) *Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(q) *Recognizing* that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(r) *Recognizing* that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(s) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(t) *Highlighting* the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(u) *Bearing in mind* that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable

human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) *Recognizing* the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) *Realizing* that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) *Convinced* that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) *Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

*Have agreed* as follows:

#### **Article 1. Purpose**

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

#### **Article 2. Definitions**

For the purposes of the present Convention:

“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non-spoken languages;

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

#### **Article 3. General principles**

The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

#### **Article 4. General obligations**

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- (f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
- (i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 5. Equality and non-discrimination**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

#### **Article 6. Women with disabilities**

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

#### **Article 7. Children with disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

#### **Article 8. Awareness-raising**

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

(c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns designed:

- (i) To nurture receptiveness to the rights of persons with disabilities;
- (ii) To promote positive perceptions and greater social awareness towards persons with disabilities;
- (iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

### **Article 9. Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

(a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

(c) To provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

**Article 10. Right to life**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

**Article 11. Situations of risk and humanitarian emergencies**

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

**Article 12. Equal recognition before the law**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

**Article 13. Access to justice**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

**Article 14. Liberty and security of person**

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance

with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

#### **Article 15. Freedom from torture or cruel, inhuman or degrading treatment or punishment**

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

#### **Article 16. Freedom from exploitation, violence and abuse**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

#### **Article 17. Protecting the integrity of the person**

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

#### **Article 18. Liberty of movement and nationality**

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

- (c) Are free to leave any country, including their own;
- (d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

#### **Article 19. Living independently and being included in the community**

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

#### **Article 20. Personal mobility**

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- (a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

#### **Article 21. Freedom of expression and opinion, and access to information**

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

#### **Article 22. Respect for privacy**

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

#### **Article 23. Respect for home and the family**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

#### **Article 24. Education**

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

### **Article 25. Health**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

### **Article 26. Habilitation and rehabilitation**

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

### **Article 27. Work and employment**

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

- (f) Promote opportunities for self-employment, entrepreneurship, the development of co-operatives and starting one's own business;
- (g) Employ persons with disabilities in the public sector;
- (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
- (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

#### **Article 28. Adequate standard of living and social protection**

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- (d) To ensure access by persons with disabilities to public housing programmes;
- (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

#### **Article 29. Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

- (a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, *inter alia*, by:
  - (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
  - (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

- (i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
- (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

### **Article 30. Participation in cultural life, recreation, leisure and sport**

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

**Article 31. Statistics and data collection**

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

- (a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
- (b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

**Article 32. International cooperation**

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, *inter alia*:

- (a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
- (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
- (c) Facilitating cooperation in research and access to scientific and technical knowledge;
- (d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

**Article 33. National implementation and monitoring**

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

**Article 34. Committee on the Rights of Persons with Disabilities**

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 35. Reports by States Parties**

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

#### **Article 36. Consideration of reports**

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

#### **Article 37. Cooperation between States Parties and the Committee**

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.

2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

#### **Article 38. Relationship of the Committee with other bodies**

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

#### **Article 39. Report of the Committee**

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

#### **Article 40. Conference of States Parties**

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.
2. No later than six months after the entry into force of the present Convention, the Conference of States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General biennially or upon the decision of the Conference of States Parties.

#### **Article 41. Depositary**

The Secretary-General of the United Nations shall be the depositary of the present Convention.

#### **Article 42. Signature**

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

#### **Article 43. Consent to be bound**

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

#### **Article 44. Regional integration organizations**

1. “Regional integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.
2. References to “States Parties” in the present Convention shall apply to such organizations within the limits of their competence.
3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, of the present Convention, any instrument deposited by a regional integration organization shall not be counted.
4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

**Article 45. Entry into force**

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

**Article 46. Reservations**

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

**Article 47. Amendments**

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

**Article 48. Denunciation**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

**Article 49. Accessible format**

The text of the present Convention shall be made available in accessible formats.

**Article 50. Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

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## 43.(a) OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Done at New York on 13 December 2006

Entry into force: 3 May 2008

United Nations, *Treaty Series*, vol. 2518, p. 283; Reg. No. 44910

The States Parties to the present Protocol have agreed as follows:

### Article 1

1. A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Rights of Persons with Disabilities (“the Committee”) to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.

2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

### Article 2

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;
- (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (d) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (e) It is manifestly ill-founded or not sufficiently substantiated; or when
- (f) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

### Article 3

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

### Article 4

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

### Article 5

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

**Article 6**

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

**Article 7**

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 6, paragraph 4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

**Article 8**

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

**Article 9**

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

**Article 10**

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

**Article 11**

The present Protocol shall be subject to ratification by signatory States of the present Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of the present Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

**Article 12**

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and the present Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to

matters governed by the Convention and the present Protocol. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to “States Parties” in the present Protocol shall apply to such organizations within the limits of their competence.

3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, of the present Protocol, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

### **Article 13**

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

### **Article 14**

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2. Reservations may be withdrawn at any time.

### **Article 15**

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

### **Article 16**

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

### **Article 17**

The text of the present Protocol shall be made available in accessible formats.

**Article 18**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

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**44. INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE**

Done at New York on 20 December 2006

Entry into force: 23 December 2010

United Nations, *Treaty Series*, vol. 2716, p. 3; Reg. No. 48088

**Preamble**

The States Parties to this Convention,

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Having regard* to the Universal Declaration of Human Rights,

*Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

*Also recalling* the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992,

*Aware* of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

*Determined* to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

*Considering* the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,

*Affirming* the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end,

*Have agreed* on the following articles:

**PART I****Article 1**

1. No one shall be subjected to enforced disappearance.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

**Article 2**

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons

or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

### **Article 3**

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

### **Article 4**

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

### **Article 5**

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

### **Article 6**

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

### **Article 7**

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish:

(a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(b) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappear-

ance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.

#### **Article 8**

Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

- (a) Is of long duration and is proportionate to the extreme seriousness of this offence;
- (b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

#### **Article 9**

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:

- (a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is one of its nationals;
- (c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

#### **Article 10**

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.

3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

#### **Article 11**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence of enforced disappearance is found shall, if it does not extradite that person or surrender

him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.

3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

### Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:

(a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;

(b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

### Article 13

1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.

2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.

3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offence of enforced disappearance.

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.

6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.

7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State 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, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

#### **Article 14**

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

#### **Article 15**

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

#### **Article 16**

1. No State Party shall expel, return ("*refouler*"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

#### **Article 17**

1. No one shall be held in secret detention.

2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:

- (a) Establish the conditions under which orders of deprivation of liberty may be given;
- (b) Indicate those authorities authorized to order the deprivation of liberty;
- (c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;
- (d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;

(e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;

(f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.

3. Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

(a) The identity of the person deprived of liberty;

(b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;

(c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;

(d) The authority responsible for supervising the deprivation of liberty;

(e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;

(f) Elements relating to the state of health of the person deprived of liberty;

(g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;

(h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

## Article 18

1. Subject to articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:

(a) The authority that ordered the deprivation of liberty;

(b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;

(c) The authority responsible for supervising the deprivation of liberty;

(d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;

(e) The date, time and place of release;

(f) Elements relating to the state of health of the person deprived of liberty;

(g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

**Article 19**

1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

**Article 20**

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.

2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

**Article 21**

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

**Article 22**

Without prejudice to article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

(a) Delaying or obstructing the remedies referred to in article 17, paragraph 2 (f), and article 20, paragraph 2;

(b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;

(c) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

**Article 23**

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:

(a) Prevent the involvement of such officials in enforced disappearances;

(b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;

(c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.

2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

#### Article 24

1. For the purposes of this Convention, “victim” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.

3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

(a) Restitution;

(b) Rehabilitation;

(c) Satisfaction, including restoration of dignity and reputation;

(d) Guarantees of non-repetition.

6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

#### Article 25

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

## PART II

### Article 26

1. A Committee on Enforced Disappearances (hereinafter referred to as “the Committee”) shall be established to carry out the functions provided for under this Convention. The Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.

4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 2 of this article.

5. If a member of the Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of having been informed by the Secretary-General of the United Nations of the proposed appointment.

6. The Committee shall establish its own rules of procedure.

7. The Secretary-General of the United Nations shall provide the Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.

8. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations, as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

9. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate, to the extent of the Committee's functions that the State Party has accepted.

#### **Article 27**

A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide, in accordance with the procedure described in article 44, paragraph 2, whether it is appropriate to transfer to another body – without excluding any possibility – the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

#### **Article 28**

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.

2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

#### **Article 29**

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.

2. The Secretary-General of the United Nations shall make this report available to all States Parties.

3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.

4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

#### **Article 30**

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.

2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:

- (a) Is not manifestly unfounded;
- (b) Does not constitute an abuse of the right of submission of such requests;
- (c) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;
- (d) Is not incompatible with the provisions of this Convention; and
- (e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;

it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

### **Article 31**

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:

- (a) The communication is anonymous;
- (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;
- (c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where
- (d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.

3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.

5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

### **Article 32**

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

**Article 33**

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.

2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.

3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.

4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.

5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

**Article 34**

If the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.

**Article 35**

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.

2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-a-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

**Article 36**

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

2. Before an observation on a State Party is published in the annual report, the State Party concerned shall be informed in advance and shall be given reasonable time to answer. This State Party may request the publication of its comments or observations in the report.

**PART III****Article 37**

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

**Article 38**

1. This Convention is open for signature by all Member States of the United Nations.

2. This Convention is subject to ratification by all Member States of the United Nations. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open to accession by all Member States of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

#### **Article 39**

1. This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.

#### **Article 40**

The Secretary-General of the United Nations shall notify all States Members of the United Nations and all States which have signed or acceded to this Convention of the following:

- (a) Signatures, ratifications and accessions under article 38;
- (b) The date of entry into force of this Convention under article 39.

#### **Article 41**

The provisions of this Convention shall apply to all parts of federal States without any limitations or exceptions.

#### **Article 42**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a declaration.

3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this article may at any time withdraw this declaration by notification to the Secretary-General of the United Nations.

#### **Article 43**

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

#### **Article 44**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least

one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all the States Parties for acceptance.

3. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have accepted it in accordance with their respective constitutional processes.

4. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendment which they have accepted.

#### Article 45

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article 38.

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## Implementation and monitoring

### 45. PROCEDURE FOR DEALING WITH COMMUNICATIONS RELATING TO VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

ECOSOC resolution 1503 (XLVIII) of 27 May 1970

*The Economic and Social Council,*

*Noting* resolutions 7 (XXVI) and 17 (XXV) of the Commission on Human Rights and resolution 2 (XXI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

1. *Authorizes* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission;

2. *Decides* that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should, as the first stage in the implementation of the present resolution, devise at its twenty-third session appropriate procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F (XXVIII) and in accordance with Council resolution 1235 (XLII) of 6 June 1967;

3. *Requests* the Secretary-General to prepare a document on the question of admissibility of communications for the Sub-Commission's consideration at its twenty-third session;

4. *Further requests* the Secretary-General:

(a) To furnish to the members of the Sub-Commission every month a list of communications prepared by him in accordance with Council resolution 728 F (XXVIII) and a brief description of them, together with the text of any replies received from Governments;

(b) To make available to the members of the working group at their meetings the originals of such communications listed as they may request, having due regard to the provisions of paragraph 2 (b) of Council resolution 728 F (XXVIII) concerning the divulging of the identity of the authors of communications;

(c) To circulate to the members of the Sub-Commission, in the working languages, the originals of such communications as are referred to the Sub-Commission by the working group;

5. *Requests* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider in private meetings, in accordance with paragraph 1 above, the communications brought before it in accordance with the decision of a majority of the members of the working group and any replies of Governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission;

6. *Requests* the Commission on Human Rights after it has examined any situation referred to it by the Sub-Commission to determine:

(a) Whether it requires a thorough study by the Commission and a report and recommendations thereon to the Council in accordance with paragraph 3 of Council resolution 1235 (XLII);

(b) Whether it may be a subject of an investigation by an *ad hoc* committee to be appointed by the Commission which shall be undertaken only with the express consent of the State concerned and shall be conducted in constant co-operation with that State and under conditions determined by agreement with it. In any event, the investigation may be undertaken only if:

(i) All available means at the national level have been resorted to and exhausted;

(ii) The situation does not relate to a matter which is being dealt with under other procedures prescribed in the constituent instruments of, or conventions adopted by, the United Nations and the specialized agencies, or in regional conventions, or which the State concerned wishes to submit to other procedures in accordance with general or special international agreements to which it is a party.

7. *Decides* that if the Commission on Human Rights appoints an *ad hoc* committee to carry on an investigation with the consent of the State concerned:

(a) The composition of the committee shall be determined by the Commission. The members of the committee shall be independent persons whose competence and impartiality is beyond question. Their appointment shall be subject to the consent of the Government concerned;

(b) The committee shall establish its own rules of procedure. It shall be subject to the quorum rule. It shall have authority to receive communications and hear witnesses, as necessary. The investigation shall be conducted in co-operation with the Government concerned;

(c) The committee's procedure shall be confidential, its proceedings shall be conducted in private meetings and its communications shall not be publicized in any way;

(d) The committee shall strive for friendly solutions before, during and even after the investigation;

(e) The committee shall report to the Commission on Human Rights with such observations and suggestions as it may deem appropriate;

8. *Decides* that all actions envisaged in the implementation of the present resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council;

9. *Decides* to authorize the Secretary-General to provide all facilities which may be required to carry out the present resolution, making use of the existing staff of the Division of Human Rights of the United Nations Secretariat;

10. *Decides* that the procedure set out in the present resolution for dealing with communications relating to violations of human rights and fundamental freedoms should be reviewed if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement.

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## 46. PROCEDURE FOR DEALING WITH COMMUNICATIONS CONCERNING HUMAN RIGHTS

ECOSOC resolution 2000/3 of 16 June 2000

*The Economic and Social Council,*

*Recalling* its resolution 728 F (XXVIII) of 30 July 1959 concerning the handling of communications concerning human rights and its decision 79(LVIII) of 6 May 1975 relating thereto,

*Recalling also* its resolution 1235 (XLII) of 6 June 1967 authorizing the Commission on Human Rights to examine information relevant to gross violations of human rights and fundamental freedoms, its resolution 1503 (XLVIII) of 27 May 1970 establishing a procedure for dealing with communications relating to violations of human rights and fundamental freedoms and its resolution 1990/41 of 25 May 1990 concerning the establishment, composition and designation of the members of the Working Group on Situations of the Commission,

*Recalling further* resolution 1 (XXIV) of the Subcommittee on Prevention of Discrimination and Protection of Minorities (now the Subcommittee on the Promotion and Protection of Human Rights) of 13 August 1971 concerning criteria for the admissibility of communications, as well as Subcommittee resolution 2 (XXIV) of 16 August 1971 concerning the establishment, composition and designation of the members of the Working Group on Communications,

*Recalling* Commission on Human Rights decisions 3 (XXX) of 6 March 1974, 5 (XXXIV) of 3 March 1978 and 9 (XXXVI) of 7 March 1980, all aimed at facilitating government participation and cooperation under the procedure, and decision 3 (XXXIV) of 3 March 1978 inviting the Chairman-Rapporteur of the Working Communications to be present during the deliberations of the Commission on that item,

*Taking note* of Commission on Human Rights decision 2000/109 of 26 April 2000, in which the Commission, inter alia, approved the recommendations of its inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights concerning the review of the procedure governed by Council resolution 1503 (XLVIII) and related resolutions and decisions,

1. *Endorses* Commission on Human Rights decision 2000/109 insofar as it concerns the review of the procedure governed by Council resolution 1503 (XLVIII) and related resolutions and decisions;

2. *Decides*, accordingly, that the Working Group on Communications designated in conformity with paragraph 37 of the report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights shall henceforth meet annually for two weeks, immediately following the annual session of the Subcommittee on the Promotion and Protection of Human Rights, to examine the communications received under Council resolution 728 F (XXVIII) that have been transmitted to the Governments concerned not later than twelve weeks prior to the meeting of the Working Group on Communications, and any government replies relating thereto, in conformity with the criteria for the admissibility of communications contained in resolution 1 (XXIV) of the Subcommittee, with a view to bringing to the attention of the Working

Group on Situations any particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms;

3. *Requests* the Secretary-General, with the approval of the Chairman-Rapporteur of the Working Group on Communications, to screen out manifestly ill-founded communications in the preparation of the monthly confidential summaries of communications (confidential lists of communications) communicated to the members of the Working Group, it being understood that communications screened out would not be transmitted to the Governments concerned for reply;

4. *Calls upon* the Secretary-General to inform the countries concerned, immediately after the conclusion of the meeting of the Working Group on Communications, of the actions taken in regard to them;

5. *Entrusts* to the Working Group on Situations designated in conformity with paragraph 40 of the report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, which shall meet annually for one week not less than one month prior to the annual session of the Commission, the role of examining the confidential report and recommendations of the Working Group on Communications and determining whether or not to refer a particular situation thus brought before it to the Commission, as well as of examining the particular situations kept under review by the Commission under the procedure, and, accordingly, of submitting to the Commission a confidential report identifying the main issues of concern, normally together with a draft resolution or draft decision recommending the action to be taken by the Commission in respect of the situations referred to it;

6. *Requests* the Secretary-General to make the confidential files available, at least one week in advance of the first closed meeting, to all members of the Commission on Human Rights;

7. *Authorizes* the Commission on Human Rights, as it deems appropriate, to consider the particular situations placed before it by the Working Group on Situations, as well as the situations kept under review, in two separate closed meetings, employing the following modalities:

(a) At the first closed meeting, each country concerned would be invited to make opening presentations; a discussion would then follow between members of the Commission and the Government concerned, based on the contents of confidential files and the report of the Working Group on Situations;

(b) In the interim between the first and second closed meetings, any member or members of the Commission could submit an alternative or an amendment to any texts forwarded by the Working Group on Situations; any such draft texts would be circulated confidentially by the secretariat, in accordance with the rules of procedure of the functional commissions of the Council, in advance of the second closed meeting;

(c) At the second closed meeting, members of the Commission would discuss and take action on the draft resolutions or decisions; a representative or representatives of the Governments concerned would have the right to be present during the adoption of the final resolution or decision taken in regard to the human rights situation in that country; as has been the established practice, the Chairperson of the Commission would subsequently announce in a public meeting which countries had been examined under the 1503 procedure, as well as the names of countries no longer being dealt with under the procedure; the 1503 dossiers would remain confidential, except where the Government concerned has indicated the wish that they become public;

(d) In accordance with the established practice, the action taken in respect of a particular situation should be one of the following options:

- (i) To discontinue consideration of the matter when further consideration or action is not warranted;
- (ii) To keep the situation under review in the light of any further information received from the Government concerned and any further information which may reach the Commission under the 1503 procedure;
- (iii) To keep the situation under review and to appoint an independent expert;

- (iv) To discontinue consideration of the matter under the confidential procedure governed by Council resolution 1503(XLVIII) in order to take up consideration of the same matter under the public procedure governed by Council resolution 1235 (XLII);

8. *Decides* that the provisions of Council resolution 1503 (XLVIII) and related resolutions and decisions not affected by the present reorganization of work shall remain in force, including:

(a) Provisions relating to the duties and responsibilities of the Secretary-General, it being understood that, in respect of the handling of communications and government replies relating thereto, the duties and responsibilities are as follows:

- (i) The compilation, as before, of monthly confidential summaries of incoming communications concerning alleged violations of human rights; the identity of authors may be deleted upon request;
- (ii) The transmittal of a copy of each summarized communication, in the language received, to the Government concerned for reply, without divulging the identity of the author if he or she so requests;
- (iii) Acknowledging the receipt of communications to their authors;
- (iv) The reproduction and circulation to the members of the Commission on Human Rights, as before, of the replies received from Governments;

(b) Provisions aimed at facilitating government cooperation and participation in the procedure, including the provisions of Commission decision 3 (XXX), now to be applied following the meetings of the Working Group on Communications;

9. *Also decides* that all actions envisaged in the implementation of the present resolution by the Working Group on Communications, the Working Group on Situations and the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Council;

10. *Further decides* that the procedure as amended may continue to be referred to as the 1503 procedure.

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## 47. VIENNA DECLARATION AND PROGRAMME OF ACTION

Adopted at Vienna on 25 June 1993

United Nations, Doc. A/CONF.157/23

The World Conference on Human Rights,

*Considering* that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner,

*Recognizing and affirming* that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms,

*Reaffirming* their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights,

*Reaffirming* the commitment contained in Article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international coop-

eration for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all,

*Emphasizing* the responsibilities of all States, in conformity with the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Recalling* the Preamble to the Charter of the United Nations, in particular the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small,

*Recalling also* the determination expressed in the Preamble of the Charter of the United Nations to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

*Emphasizing* that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

*Considering* the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity,

*Deeply concerned* by various forms of discrimination and violence, to which women continue to be exposed all over the world,

*Recognizing* that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

*Having taken into account* the Declarations adopted by the three regional meetings at Tunis, San José and Bangkok and the contributions made by Governments, and bearing in mind the suggestions made by intergovernmental and non-governmental organizations, as well as the studies prepared by independent experts during the preparatory process leading to the World Conference on Human Rights,

*Welcoming* the International Year of the World's Indigenous People 1993 as a reaffirmation of the commitment of the international community to ensure their enjoyment of all human rights and fundamental freedoms and to respect the value and diversity of their cultures and identities,

*Recognizing also* that the international community should devise ways and means to remove the current obstacles and meet challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting therefrom throughout the world,

*Invoking* the spirit of our age and the realities of our time which call upon the peoples of the world and all States Members of the United Nations to rededicate themselves to the global task of promoting and protecting all human rights and fundamental freedoms so as to secure full and universal enjoyment of these rights,

*Determined* to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity,

*Solemnly adopts* the Vienna Declaration and Programme of Action.

## I

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

In this framework, enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations.

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

3. Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.

4. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social and economic development, in conformity with the Charter of the United Nations.

7. The processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law.

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

9. The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development.

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

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.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

11. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Consequently, the World Conference on Human Rights calls on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping.

Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern.

12. The World Conference on Human Rights calls upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.

13. There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.

14. The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.

15. Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in cooperating and coordinating their activities against these evils.

16. The World Conference on Human Rights welcomes the progress made in dismantling apartheid and calls upon the international community and the United Nations system to assist in this process.

The World Conference on Human Rights also deplores the continuing acts of violence aimed at undermining the quest for a peaceful dismantling of apartheid.

17. The acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments. The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

19. Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live,

The World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

20. The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Considering the importance of the promotion and protection of the rights of indigenous people, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted

positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.

21. The World Conference on Human Rights, welcoming the early ratification of the Convention on the Rights of the Child by a large number of States and noting the recognition of the human rights of children in the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, urges universal ratification of the Convention by 1995 and its effective implementation by States parties through the adoption of all the necessary legislative, administrative and other measures and the allocation to the maximum extent of the available resources. In all actions concerning children, non-discrimination and the best interest of the child should be primary considerations and the views of the child given due weight. National and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies. International cooperation and solidarity should be promoted to support the implementation of the Convention and the rights of the child should be a priority in the United Nations system-wide action on human rights.

The World Conference on Human Rights also stresses that the child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection.

22. Special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.

23. The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country. In this respect it stresses the importance of the Universal Declaration of Human Rights, the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and regional instruments. It expresses its appreciation to States that continue to admit and host large numbers of refugees in their territories, and to the Office of the United Nations High Commissioner for Refugees for its dedication to its task. It also expresses its appreciation to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The World Conference on Human Rights recognizes that gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to displacement of people.

The World Conference on Human Rights recognizes that, in view of the complexities of the global refugee crisis and in accordance with the Charter of the United Nations, relevant international instruments and international solidarity and in the spirit of burden-sharing, a comprehensive approach by the international community is needed in coordination and cooperation with the countries concerned and relevant organizations, bearing in mind the mandate of the United Nations High Commissioner for Refugees. This should include the development of strategies to address the root causes and effects of movements of refugees and other displaced persons, the strengthening of emergency preparedness and response mechanisms, the provision of effective protection and assistance, bearing in mind the special needs of women and children, as well as the achievement of durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation, including solutions such as those adopted by the international refugee conferences. The World Conference on Human Rights underlines the responsibilities of States, particularly as they relate to the countries of origin.

In the light of the comprehensive approach, the World Conference on Human Rights emphasizes the importance of giving special attention including through intergovernmental and humani-

tarian organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation.

In accordance with the Charter of the United Nations and the principles of humanitarian law, the World Conference on Human Rights further emphasizes the importance of and the need for humanitarian assistance to victims of all natural and man-made disasters.

24. Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems.

25. The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

26. The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties. All States are encouraged to accede to these international instruments; all States are encouraged to avoid, as far as possible, the resort to reservations.

27. Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice.

28. The World Conference on Human Rights expresses its dismay at massive violations of human rights especially in the form of genocide, "ethnic cleansing" and systematic rape of women in war situations, creating mass exodus of refugees and displaced persons. While strongly condemning such abhorrent practices it reiterates the call that perpetrators of such crimes be punished and such practices immediately stopped.

29. The World Conference on Human Rights expresses grave concern about continuing human rights violations in all parts of the world in disregard of standards as contained in international human rights instruments and international humanitarian law and about the lack of sufficient and effective remedies for the victims.

The World Conference on Human Rights is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children, the elderly and the disabled. The Conference therefore calls upon States and all parties to armed conflicts strictly to observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions.

The World Conference on Human Rights reaffirms the right of the victims to be assisted by humanitarian organizations, as set forth in the Geneva Conventions of 1949 and other relevant

instruments of international humanitarian law, and calls for the safe and timely access for such assistance.

30. The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.

31. The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.

32. The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

33. The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at the national as well as international levels. The World Conference on Human Rights notes that resource constraints and institutional inadequacies may impede the immediate realization of these objectives.

34. Increased efforts should be made to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms. Governments, the United Nations system as well as other multilateral organizations are urged to increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures which uphold the rule of law and democracy, electoral assistance, human rights awareness through training, teaching and education, popular participation and civil society.

The programmes of advisory services and technical cooperation under the Centre for Human Rights should be strengthened as well as made more efficient and transparent and thus become a major contribution to improving respect for human rights. States are called upon to increase their contributions to these programmes, both through promoting a larger allocation from the United Nations regular budget, and through voluntary contributions.

35. The full and effective implementation of United Nations activities to promote and protect human rights must reflect the high importance accorded to human rights by the Charter of the United Nations and the demands of the United Nations human rights activities, as mandated by Member States. To this end, United Nations human rights activities should be provided with increased resources.

36. The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the “Principles relating to the status of national institutions” and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

37. Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities.

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist.

38. The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard-setting lies with States, the conference also appreciates the contribution of non-governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations. Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law. These rights and freedoms may not be exercised contrary to the purposes and principles of the United Nations. Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.

39. Underlining the importance of objective, responsible and impartial information about human rights and humanitarian issues, the World Conference on Human Rights encourages the increased involvement of the media, for whom freedom and protection should be guaranteed within the framework of national law.

## II

### **A. INCREASED COORDINATION ON HUMAN RIGHTS WITHIN THE UNITED NATIONS SYSTEM**

1. The World Conference on Human Rights recommends increased coordination in support of human rights and fundamental freedoms within the United Nations system. To this end, the World Conference on Human Rights urges all United Nations organs, bodies and the specialized agencies whose activities deal with human rights to cooperate in order to strengthen, rationalize and streamline their activities, taking into account the need to avoid unnecessary duplication. The World Conference on Human Rights also recommends to the Secretary-General that high-level officials of relevant United Nations bodies and specialized agencies at their annual meeting, besides coordinating their activities, also assess the impact of their strategies and policies on the enjoyment of all human rights.

2. Furthermore, the World Conference on Human Rights calls on regional organizations and prominent international and regional finance and development institutions to assess also the impact of their policies and programmes on the enjoyment of human rights.

3. The World Conference on Human Rights recognizes that relevant specialized agencies and bodies and institutions of the United Nations system as well as other relevant intergovernmental organizations whose activities deal with human rights play a vital role in the formulation, promotion and implementation of human rights standards, within their respective mandates, and should take into account the outcome of the World Conference on Human Rights within their fields of competence.

4. The World Conference on Human Rights strongly recommends that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance. The Secretary-General, in consultation with treaty bodies, should consider opening a dialogue with States not having acceded to these human rights treaties, in order to identify obstacles and to seek ways of overcoming them.

5. The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.

6. The World Conference on Human Rights, recognizing the need to maintain consistency with the high quality of existing international standards and to avoid proliferation of human rights instruments, reaffirms the guidelines relating to the elaboration of new international instruments contained in General Assembly resolution 41/120 of 4 December 1986 and calls on the United Nations human rights bodies, when considering the elaboration of new international standards, to keep those guidelines in mind, to consult with human rights treaty bodies on the necessity for drafting new standards and to request the Secretariat to carry out technical reviews of proposed new instruments.

7. The World Conference on Human Rights recommends that human rights officers be assigned if and when necessary to regional offices of the United Nations Organization with the purpose of disseminating information and offering training and other technical assistance in the field of human rights upon the request of concerned Member States. Human rights training for international civil servants who are assigned to work relating to human rights should be organized.

8. The World Conference on Human Rights welcomes the convening of emergency sessions of the Commission on Human Rights as a positive initiative and that other ways of responding to acute violations of human rights be considered by the relevant organs of the United Nations system.

### **Resources**

9. The World Conference on Human Rights, concerned by the growing disparity between the activities of the Centre for Human Rights and the human, financial and other resources available to carry them out, and bearing in mind the resources needed for other important United Nations programmes, requests the Secretary-General and the General Assembly to take immediate steps to increase substantially the resources for the human rights programme from within the existing and future regular budgets of the United Nations, and to take urgent steps to seek increased extra-budgetary resources.

10. Within this framework, an increased proportion of the regular budget should be allocated directly to the Centre for Human Rights to cover its costs and all other costs borne by the Centre for Human Rights, including those related to the United Nations human rights bodies. Voluntary funding of the Centre's technical cooperation activities should reinforce this enhanced budget; the World Conference on Human Rights calls for generous contributions to the existing trust funds.

11. The World Conference on Human Rights requests the Secretary-General and the General Assembly to provide sufficient human, financial and other resources to the Centre for Human Rights to enable it effectively, efficiently and expeditiously to carry out its activities.

12. The World Conference on Human Rights, noting the need to ensure that human and financial resources are available to carry out the human rights activities, as mandated by intergovernmental bodies, urges the Secretary-General, in accordance with Article 101 of the Charter of the

United Nations, and Member States to adopt a coherent approach aimed at securing that resources commensurate to the increased mandates are allocated to the Secretariat. The World Conference on Human Rights invites the Secretary-General to consider whether adjustments to procedures in the programme budget cycle would be necessary or helpful to ensure the timely and effective implementation of human rights activities as mandated by Member States.

#### **Centre for Human Rights**

13. The World Conference on Human Rights stresses the importance of strengthening the United Nations Centre for Human Rights.

14. The Centre for Human Rights should play an important role in coordinating system-wide attention for human rights. The focal role of the Centre can best be realized if it is enabled to cooperate fully with other United Nations bodies and organs. The coordinating role of the Centre for Human Rights also implies that the office of the Centre for Human Rights in New York is strengthened.

15. The Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs, experts, working groups and treaty bodies. Follow-up on recommendations should become a priority matter for consideration by the Commission on Human Rights.

16. The Centre for Human Rights should assume a larger role in the promotion of human rights. This role could be given shape through cooperation with Member States and by an enhanced programme of advisory services and technical assistance. The existing voluntary funds will have to be expanded substantially for these purposes and should be managed in a more efficient and coordinated way. All activities should follow strict and transparent project management rules and regular programme and project evaluations should be held periodically. To this end, the results of such evaluation exercises and other relevant information should be made available regularly. The Centre should, in particular, organize at least once a year information meetings open to all Member States and organizations directly involved in these projects and programmes.

#### **Adaptation and strengthening of the United Nations machinery for human rights, including the question of the establishment of a United Nations High Commissioner for Human Rights**

17. The World Conference on Human Rights recognizes the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights, as reflected in the present Declaration and within the framework of a balanced and sustainable development for all people. In particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness.

18. The World Conference on Human Rights recommends to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.

### **B. EQUALITY, DIGNITY AND TOLERANCE**

#### **1. Racism, racial discrimination, xenophobia and other forms of intolerance**

19. The World Conference on Human Rights considers the elimination of racism and racial discrimination, in particular in their institutionalized forms such as apartheid or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community and a worldwide promotion programme in the field of human rights. United Nations organs and agencies should strengthen their efforts to implement such a programme of action related to the third decade to combat racism and racial discrimination as well as subsequent mandates to the same end. The World Conference on Human Rights strongly appeals to the international community to contribute generously to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination.

20. The World Conference on Human Rights urges all Governments to take immediate measures and to develop strong policies to prevent and combat all forms and manifestations of racism,

xenophobia or related intolerance, where necessary by enactment of appropriate legislation, including penal measures, and by the establishment of national institutions to combat such phenomena.

21. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to appoint a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The World Conference on Human Rights also appeals to all States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to consider making the declaration under article 14 of the Convention.

22. The World Conference on Human Rights calls upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. The Conference also invites all States to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

23. The World Conference on Human Rights stresses that all persons who perpetrate or authorize criminal acts associated with ethnic cleansing are individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice.

24. The World Conference on Human Rights calls on all States to take immediate measures, individually and collectively, to combat the practice of ethnic cleansing to bring it quickly to an end. Victims of the abhorrent practice of ethnic cleansing are entitled to appropriate and effective remedies.

## **2. Persons belonging to national or ethnic, religious and linguistic minorities**

25. The World Conference on Human Rights calls on the Commission on Human Rights to examine ways and means to promote and protect effectively the rights of persons belonging to minorities as set out in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. In this context, the World Conference on Human Rights calls upon the Centre for Human Rights to provide, at the request of Governments concerned and as part of its programme of advisory services and technical assistance, qualified expertise on minority issues and human rights, as well as on the prevention and resolution of disputes, to assist in existing or potential situations involving minorities.

26. The World Conference on Human Rights urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities in accordance with the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

27. Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country.

### **Indigenous people**

28. The World Conference on Human Rights calls on the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to complete the drafting of a declaration on the rights of indigenous people at its eleventh session.

29. The World Conference on Human Rights recommends that the Commission on Human Rights consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on the rights of indigenous people.

30. The World Conference on Human Rights also recommends that advisory services and technical assistance programmes within the United Nations system respond positively to requests by States for assistance which would be of direct benefit to indigenous people. The World Conference on Human Rights further recommends that adequate human and financial resources be made avail-

able to the Centre for Human Rights within the overall framework of strengthening the Centre's activities as envisaged by this document.

31. The World Conference on Human Rights urges States to ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them.

32. The World Conference on Human Rights recommends that the General Assembly proclaim an international decade of the world's indigenous people, to begin from January 1994, including action-orientated programmes, to be decided upon in partnership with indigenous people. An appropriate voluntary trust fund should be set up for this purpose. In the framework of such a decade, the establishment of a permanent forum for indigenous people in the United Nations system should be considered.

### **Migrant workers**

33. The World Conference on Human Rights urges all States to guarantee the protection of the human rights of all migrant workers and their families.

34. The World Conference on Human Rights considers that the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society of the State in which they reside is of particular importance.

35. The World Conference on Human Rights invites States to consider the possibility of signing and ratifying, at the earliest possible time, the International Convention on the Rights of All Migrant Workers and Members of Their Families.

### **3. The equal status and human rights of women**

36. The World Conference on Human Rights urges the full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations. The World Conference on Human Rights also underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process, and reiterates the objectives established on global action for women towards sustainable and equitable development set forth in the Rio Declaration on Environment and Development and chapter 24 of Agenda 21, adopted by the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 3-14 June 1992).

37. The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms. In particular, steps should be taken to increase cooperation and promote further integration of objectives and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee for the Elimination of Discrimination against Women, the United Nations Development Fund for Women, the United Nations Development Programme and other United Nations agencies. In this context, cooperation and coordination should be strengthened between the Centre for Human Rights and the Division for the Advancement of Women.

38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

39. The World Conference on Human Rights urges the eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of uni-

versal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged. Inter alia, the Committee on the Elimination of Discrimination against Women should continue its review of reservations to the Convention. States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law.

40. Treaty monitoring bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuit of full and equal enjoyment of human rights and non-discrimination. New procedures should also be adopted to strengthen implementation of the commitment to women's equality and the human rights of women. The Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to consider the appointment of a special rapporteur on violence against women at its fiftieth session.

41. The World Conference on Human Rights recognizes the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span. In the context of the World Conference on Women and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the Proclamation of Tehran of 1968, the World Conference on Human Rights reaffirms, on the basis of equality between women and men, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels.

42. Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on the situation of women *de jure* and *de facto* in their reports to treaty monitoring bodies. The World Conference on Human Rights notes with satisfaction that the Commission on Human Rights adopted at its forty-ninth session resolution 1993/46 of 8 March 1993 stating that rapporteurs and working groups in the field of human rights should also be encouraged to do so. Steps should also be taken by the Division for the Advancement of Women in cooperation with other United Nations bodies, specifically the Centre for Human Rights, to ensure that the human rights activities of the United Nations regularly address violations of women's human rights, including gender-specific abuses. Training for United Nations human rights and humanitarian relief personnel to assist them to recognize and deal with human rights abuses particular to women and to carry out their work without gender bias should be encouraged.

43. The World Conference on Human Rights urges Governments and regional and international organizations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process. It encourages further steps within the United Nations Secretariat to appoint and promote women staff members in accordance with the Charter of the United Nations, and encourages other principal and subsidiary organs of the United Nations to guarantee the participation of women under conditions of equality.

44. The World Conference on Human Rights welcomes the World Conference on Women to be held in Beijing in 1995 and urges that human rights of women should play an important role in its deliberations, in accordance with the priority themes of the World Conference on Women of equality, development and peace.

#### 4. The rights of the child

45. The World Conference on Human Rights reiterates the principle of "First Call for Children" and, in this respect, underlines the importance of major national and international efforts, especially those of the United Nations Children's Fund, for promoting respect for the rights of the child to survival, protection, development and participation.

46. Measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, as well as their effective implementation. The World Conference on Human Rights urges States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law.

47. The World Conference on Human Rights urges all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. The Conference calls on States to integrate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and to basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty.

48. The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.

49. The World Conference on Human Rights supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl child. The World Conference on Human Rights urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

50. The World Conference on Human Rights strongly supports the proposal that the Secretary-General initiate a study into means of improving the protection of children in armed conflicts. Humanitarian norms should be implemented and measures taken in order to protect and facilitate assistance to children in war zones. Measures should include protection for children against indiscriminate use of all weapons of war, especially anti-personnel mines. The need for aftercare and rehabilitation of children traumatized by war must be addressed urgently. The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment into armed forces.

51. The World Conference on Human Rights recommends that matters relating to human rights and the situation of children be regularly reviewed and monitored by all relevant organs and mechanisms of the United Nations system and by the supervisory bodies of the specialized agencies in accordance with their mandates.

52. The World Conference on Human Rights recognizes the important role played by non-governmental organizations in the effective implementation of all human rights instruments and, in particular, the Convention on the Rights of the Child.

53. The World Conference on Human Rights recommends that the Committee on the Rights of the Child, with the assistance of the Centre for Human Rights, be enabled expeditiously and effectively to meet its mandate, especially in view of the unprecedented extent of ratification and subsequent submission of country reports.

## **5. Freedom from torture**

54. The World Conference on Human Rights welcomes the ratification by many Member States of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and encourages its speedy ratification by all other Member States.

55. The World Conference on Human Rights emphasizes that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities.

56. The World Conference on Human Rights reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts.

57. The World Conference on Human Rights therefore urges all States to put an immediate end to the practice of torture and eradicate this evil forever through full implementation of the Universal Declaration of Human Rights as well as the relevant conventions and, where necessary, strengthening of existing mechanisms. The World Conference on Human Rights calls on all States to cooperate fully with the Special Rapporteur on the question of torture in the fulfilment of his mandate.

58. Special attention should be given to ensure universal respect for, and effective implementation of, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations.

59. The World Conference on Human Rights stresses the importance of further concrete action within the framework of the United Nations with the view to providing assistance to victims of torture and ensuring more effective remedies for their physical, psychological and social rehabilitation. Providing the necessary resources for this purpose should be given high priority, inter alia, by additional contributions to the United Nations Voluntary Fund for Victims of Torture.

60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.

61. The World Conference on Human Rights reaffirms that efforts to eradicate torture should, first and foremost, be concentrated on prevention and, therefore, calls for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention.

#### **Enforced disappearances**

62. The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearance. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators.

### **6. The rights of the disabled person**

63. The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights. The World Conference on Human Rights calls on Governments, where necessary, to adopt or adjust legislation to assure access to these and other rights for disabled persons.

64. The place of disabled persons is everywhere. Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.

65. Recalling the World Programme of Action concerning Disabled Persons, adopted by the General Assembly at its thirty-seventh session, the World Conference on Human Rights calls upon the General Assembly and the Economic and Social Council to adopt the draft standard rules on the equalization of opportunities for persons with disabilities, at their meetings in 1993.

**C. COOPERATION, DEVELOPMENT AND STRENGTHENING OF HUMAN RIGHTS**

66. The World Conference on Human Rights recommends that priority be given to national and international action to promote democracy, development and human rights.

67. Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance. Equally important is the assistance to be given to the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision-making processes.

68. The World Conference on Human Rights stresses the need for the implementation of strengthened advisory services and technical assistance activities by the Centre for Human Rights. The Centre should make available to States upon request assistance on specific human rights issues, including the preparation of reports under human rights treaties as well as for the implementation of coherent and comprehensive plans of action for the promotion and protection of human rights. Strengthening the institutions of human rights and democracy, the legal protection of human rights, training of officials and others, broad-based education and public information aimed at promoting respect for human rights should all be available as components of these programmes.

69. The World Conference on Human Rights strongly recommends that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law. Such a programme, to be coordinated by the Centre for Human Rights, should be able to provide, upon the request of the interested Government, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law. That programme should make available to States assistance for the implementation of plans of action for the promotion and protection of human rights.

70. The World Conference on Human Rights requests the Secretary-General of the United Nations to submit proposals to the United Nations General Assembly, containing alternatives for the establishment, structure, operational modalities and funding of the proposed programme.

71. The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.

72. The World Conference on Human Rights reaffirms that the universal and inalienable right to development, as established in the Declaration on the Right to Development, must be implemented and realized. In this context, the World Conference on Human Rights welcomes the appointment by the Commission on Human Rights of a thematic working group on the right to development and urges that the Working Group, in consultation and cooperation with other organs and agencies of the United Nations system, promptly formulate, for early consideration by the United Nations General Assembly, comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and recommending ways and means towards the realization of the right to development by all States.

73. The World Conference on Human Rights recommends that non-governmental and other grass-roots organizations active in development and/or human rights should be enabled to play a major role on the national and international levels in the debate, activities and implementation relating to the right to development and, in cooperation with Governments, in all relevant aspects of development cooperation.

74. The World Conference on Human Rights appeals to Governments, competent agencies and institutions to increase considerably the resources devoted to building well-functioning legal

systems able to protect human rights, and to national institutions working in this area. Actors in the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human rights. Cooperation should be based on dialogue and transparency. The World Conference on Human Rights also calls for the establishment of comprehensive programmes, including resource banks of information and personnel with expertise relating to the strengthening of the rule of law and of democratic institutions.

75. The World Conference on Human Rights encourages the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights.

76. The World Conference on Human Rights recommends that more resources be made available for the strengthening or the establishment of regional arrangements for the promotion and protection of human rights under the programmes of advisory services and technical assistance of the Centre for Human Rights. States are encouraged to request assistance for such purposes as regional and subregional workshops, seminars and information exchanges designed to strengthen regional arrangements for the promotion and protection of human rights in accord with universal human rights standards as contained in international human rights instruments.

77. The World Conference on Human Rights supports all measures by the United Nations and its relevant specialized agencies to ensure the effective promotion and protection of trade union rights, as stipulated in the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments. It calls on all States to abide fully by their obligations in this regard contained in international instruments.

#### **D. HUMAN RIGHTS EDUCATION**

78. The World Conference on Human Rights considers human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.

79. States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.

80. Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.

81. Taking into account the World Plan of Action on Education for Human Rights and Democracy, adopted in March 1993 by the International Congress on Education for Human Rights and Democracy of the United Nations Educational, Scientific and Cultural Organization, and other human rights instruments, the World Conference on Human Rights recommends that States develop specific programmes and strategies for ensuring the widest human rights education and the dissemination of public information, taking particular account of the human rights needs of women.

82. Governments, with the assistance of intergovernmental organizations, national institutions and non-governmental organizations, should promote an increased awareness of human rights and mutual tolerance. The World Conference on Human Rights underlines the importance of strengthening the World Public Information Campaign for Human Rights carried out by the United Nations. They should initiate and support education in human rights and undertake effective dissemination of public information in this field. The advisory services and technical assistance programmes of the United Nations system should be able to respond immediately to requests from States for educational and training activities in the field of human rights as well as for special education concerning standards as contained in international human rights instruments and in humanitarian law and their application to special groups such as military forces, law enforcement personnel, police and the health

profession. The proclamation of a United Nations decade for human rights education in order to promote, encourage and focus these educational activities should be considered.

## **E. IMPLEMENTATION AND MONITORING METHODS**

83. The World Conference on Human Rights urges Governments to incorporate standards as contained in international human rights instruments in domestic legislation and to strengthen national structures, institutions and organs of society which play a role in promoting and safeguarding human rights.

84. The World Conference on Human Rights recommends the strengthening of United Nations activities and programmes to meet requests for assistance by States which want to establish or strengthen their own national institutions for the promotion and protection of human rights.

85. The World Conference on Human Rights also encourages the strengthening of cooperation between national institutions for the promotion and protection of human rights, particularly through exchanges of information and experience, as well as cooperation with regional organizations and the United Nations.

86. The World Conference on Human Rights strongly recommends in this regard that representatives of national institutions for the promotion and protection of human rights convene periodic meetings under the auspices of the Centre for Human Rights to examine ways and means of improving their mechanisms and sharing experiences.

87. The World Conference on Human Rights recommends to the human rights treaty bodies, to the meetings of chairpersons of the treaty bodies and to the meetings of States parties that they continue to take steps aimed at coordinating the multiple reporting requirements and guidelines for preparing State reports under the respective human rights conventions and study the suggestion that the submission of one overall report on treaty obligations undertaken by each State would make these procedures more effective and increase their impact.

88. The World Conference on Human Rights recommends that the States parties to international human rights instruments, the General Assembly and the Economic and Social Council should consider studying the existing human rights treaty bodies and the various thematic mechanisms and procedures with a view to promoting greater efficiency and effectiveness through better coordination of the various bodies, mechanisms and procedures, taking into account the need to avoid unnecessary duplication and overlapping of their mandates and tasks.

89. The World Conference on Human Rights recommends continued work on the improvement of the functioning, including the monitoring tasks, of the treaty bodies, taking into account multiple proposals made in this respect, in particular those made by the treaty bodies themselves and by the meetings of the chairpersons of the treaty bodies. The comprehensive national approach taken by the Committee on the Rights of the Child should also be encouraged.

90. The World Conference on Human Rights recommends that States parties to human rights treaties consider accepting all the available optional communication procedures.

91. The World Conference on Human Rights views with concern the issue of impunity of perpetrators of human rights violations, and supports the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue.

92. The World Conference on Human Rights recommends that the Commission on Human Rights examine the possibility for better implementation of existing human rights instruments at the international and regional levels and encourages the International Law Commission to continue its work on an international criminal court.

93. The World Conference on Human Rights appeals to States which have not yet done so to accede to the Geneva Conventions of 12 August 1949 and the Protocols thereto, and to take all appropriate national measures, including legislative ones, for their full implementation.

94. The World Conference on Human Rights recommends the speedy completion and adoption of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.

95. The World Conference on Human Rights underlines the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources. The procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings. All States are asked to cooperate fully with these procedures and mechanisms.

96. The World Conference on Human Rights recommends that the United Nations assume a more active role in the promotion and protection of human rights in ensuring full respect for international humanitarian law in all situations of armed conflict, in accordance with the purposes and principles of the Charter of the United Nations.

97. The World Conference on Human Rights, recognizing the important role of human rights components in specific arrangements concerning some peace-keeping operations by the United Nations, recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms, in conformity with the Charter of the United Nations.

98. To strengthen the enjoyment of economic, social and cultural rights, additional approaches should be examined, such as a system of indicators to measure progress in the realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.

#### **F. FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS**

99. The World Conference on Human Rights on Human Rights recommends that the General Assembly, the Commission on Human Rights and other organs and agencies of the United Nations system related to human rights consider ways and means for the full implementation, without delay, of the recommendations contained in the present Declaration, including the possibility of proclaiming a United Nations decade for human rights. The World Conference on Human Rights further recommends that the Commission on Human Rights annually review the progress towards this end.

100. The World Conference on Human Rights requests the Secretary-General of the United Nations to invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its fifty-third session, through the Commission on Human Rights and the Economic and Social Council. Likewise, regional and, as appropriate, national human rights institutions, as well as non-governmental organizations, may present their views to the Secretary-General on the progress made in the implementation of the present Declaration. Special attention should be paid to assessing the progress towards the goal of universal ratification of international human rights treaties and protocols adopted within the framework of the United Nations system.

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## 48. HUMAN RIGHTS COUNCIL

General Assembly resolution 60/251 of 15 March 2006

*The General Assembly,*

*Reaffirming* the purposes and principles contained in the Charter of the United Nations, including developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and achieving international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all,

*Reaffirming also* the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, and recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other human rights instruments,

*Reaffirming further* that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis,

*Reaffirming* that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

*Emphasizing* the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status,

*Acknowledging* that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

*Affirming* the need for all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, cultures and religions, and emphasizing that States, regional organizations, non-governmental organizations, religious bodies and the media have an important role to play in promoting tolerance, respect for and freedom of religion and belief,

*Recognizing* the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcomings,

*Recognizing also* the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization,

*Recognizing further* that the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings,

*Acknowledging* that non-governmental organizations play an important role at the national, regional and international levels, in the promotion and protection of human rights,

*Reaffirming* the commitment to strengthen the United Nations human rights machinery, with the aim of ensuring effective enjoyment by all of all human rights, civil, political, economic, social and cultural rights, including the right to development, and to that end, the resolve to create a Human Rights Council,

1. *Decides* to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly; the Assembly shall review the status of the Council within five years;

2. *Decides* that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;

3. *Decides also* that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;

4. *Decides further* that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development;

5. *Decides* that the Council shall, inter alia:

(a) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;

(b) Serve as a forum for dialogue on thematic issues on all human rights;

(c) Make recommendations to the General Assembly for the further development of international law in the field of human rights;

(d) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits;

(e) Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;

(f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;

(g) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;

(h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;

(i) Make recommendations with regard to the promotion and protection of human rights;

(j) Submit an annual report to the General Assembly;

6. *Decides also* that the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session;

7. *Decides further* that the Council shall consist of forty-seven Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups: Group of African States, thirteen; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven; the members of the Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms;

8. *Decides* that the membership in the Council shall be open to all States Members of the United Nations; when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary

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pledges and commitments made thereto; the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights;

9. *Decides also* that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership;

10. *Decides further* that the Council shall meet regularly throughout the year and schedule no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council;

11. *Decides* that the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and also decides that the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities;

12. *Decides also* that the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms;

13. *Recommends* that the Economic and Social Council request the Commission on Human Rights to conclude its work at its sixty-second session, and that it abolish the Commission on 16 June 2006;

14. *Decides* to elect the new members of the Council; the terms of membership shall be staggered, and such decision shall be taken for the first election by the drawing of lots, taking into consideration equitable geographical distribution;

15. *Decides also* that elections of the first members of the Council shall take place on 9 May 2006, and that the first meeting of the Council shall be convened on 19 June 2006;

16. *Decides further* that the Council shall review its work and functioning five years after its establishment and report to the General Assembly.

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## 49. UNITED NATIONS HUMAN RIGHTS COUNCIL: INSTITUTION-BUILDING

Human Rights Council resolution 5/1 of 18 June 2007, annex

### I. UNIVERSAL PERIODIC REVIEW MECHANISM

#### A. BASIS OF THE REVIEW

1. The basis of the review is:

- (a) The Charter of the United Nations;
- (b) The Universal Declaration of Human Rights;
- (c) Human rights instruments to which a State is party;
- (d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council (hereinafter "the Council").

2. In addition to the above and given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law.

#### B. PRINCIPLES AND OBJECTIVES

##### 1. Principles

3. The universal periodic review should:

- (a) Promote the universality, interdependence, indivisibility and interrelatedness of all human rights;
- (b) Be a cooperative mechanism based on objective and reliable information and on interactive dialogue;
- (c) Ensure universal coverage and equal treatment of all States;
- (d) Be an intergovernmental process, United Nations Member-driven and action-oriented;
- (e) Fully involve the country under review;
- (f) Complement and not duplicate other human rights mechanisms, thus representing an added value;
- (g) Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner;
- (h) Not be overly burdensome to the concerned State or to the agenda of the Council;
- (i) Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources;
- (j) Not diminish the Council's capacity to respond to urgent human rights situations;
- (k) Fully integrate a gender perspective;
- (l) Without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries;
- (m) Ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard.

##### 2. OBJECTIVES

4. The objectives of the review are:

- (a) The improvement of the human rights situation on the ground;

- (b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;
- (c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;
- (d) The sharing of best practice among States and other stakeholders;
- (e) Support for cooperation in the promotion and protection of human rights;
- (f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.

### **C. PERIODICITY AND ORDER OF THE REVIEW**

5. The review begins after the adoption of the universal periodic review mechanism by the Council.
6. The order of review should reflect the principles of universality and equal treatment.
7. The order of the review should be established as soon as possible in order to allow States to prepare adequately.
8. All member States of the Council shall be reviewed during their term of membership.
9. The initial members of the Council, especially those elected for one or two-year terms, should be reviewed first.
10. A mix of member and observer States of the Council should be reviewed.
11. Equitable geographic distribution should be respected in the selection of countries for review.
12. The first member and observer States to be reviewed will be chosen by the drawing of lots from each Regional Group in such a way as to ensure full respect for equitable geographic distribution. Alphabetical order will then be applied beginning with those countries thus selected, unless other countries volunteer to be reviewed.
13. The period between review cycles should be reasonable so as to take into account the capacity of States to prepare for, and the capacity of other stakeholders to respond to, the requests arising from the review.
14. The periodicity of the review for the first cycle will be of four years. This will imply the consideration of 48 States per year during three sessions of the working group of two weeks each.<sup>a</sup>

### **D. PROCESS AND MODALITIES OF THE REVIEW**

#### **1. Documentation**

15. The documents on which the review would be based are:
  - (a) Information prepared by the State concerned, which can take the form of a national report, on the basis of general guidelines to be adopted by the Council at its sixth session (first session of the second cycle), and any other information considered relevant by the State concerned, which could be presented either orally or in writing, provided that the written presentation summarizing the information will not exceed 20 pages, to guarantee equal treatment to all States and not to overburden the mechanism. States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders;
  - (b) Additionally a compilation prepared by the Office of the High Commissioner for Human Rights of the information contained in the reports of treaty bodies, special procedures, including

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<sup>a</sup> The universal periodic review is an evolving process; the Council, after the conclusion of the first review cycle, may review the modalities and the periodicity of this mechanism, based on best practices and lessons learned.

observations and comments by the State concerned, and other relevant official United Nations documents, which shall not exceed 10 pages;

(c) Additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the Council in the review. The Office of the High Commissioner for Human Rights will prepare a summary of such information which shall not exceed 10 pages.

16. The documents prepared by the Office of the High Commissioner for Human Rights should be elaborated following the structure of the general guidelines adopted by the Council regarding the information prepared by the State concerned.

17. Both the State's written presentation and the summaries prepared by the Office of the High Commissioner for Human Rights shall be ready six weeks prior to the review by the working group to ensure the distribution of documents simultaneously in the six official languages of the United Nations, in accordance with General Assembly resolution 53/208 of 14 January 1999.

## 2. Modalities

18. The modalities of the review shall be as follows:

(a) The review will be conducted in one working group, chaired by the President of the Council and composed of the 47 member States of the Council. Each member State will decide on the composition of its delegation;<sup>b</sup>

(b) Observer States may participate in the review, including in the interactive dialogue;

(c) Other relevant stakeholders may attend the review in the Working Group;

(d) A group of three rapporteurs, selected by the drawing of lots among the members of the Council and from different Regional Groups (*troika*) will be formed to facilitate each review, including the preparation of the report of the working group. The Office of the High Commissioner for Human Rights will provide the necessary assistance and expertise to the rapporteurs.

19. The country concerned may request that one of the rapporteurs be from its own Regional Group and may also request the substitution of a rapporteur on only one occasion.

20. A rapporteur may request to be excused from participation in a specific review process.

21. Interactive dialogue between the country under review and the Council will take place in the working group. The rapporteurs may collate issues or questions to be transmitted to the State under review to facilitate its preparation and focus the interactive dialogue, while guaranteeing fairness and transparency.

22. The duration of the review will be three hours for each country in the working group. Additional time of up to one hour will be allocated for the consideration of the outcome by the plenary of the Council.

23. Half an hour will be allocated for the adoption of the report of each country under review in the working group.

24. A reasonable time frame should be allocated between the review and the adoption of the report of each State in the working group.

25. The final outcome will be adopted by the plenary of the Council.

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<sup>b</sup> A Universal Periodic Review Voluntary Trust Fund should be established to facilitate the participation of developing countries, particularly the Least Developed Countries, in the universal periodic review mechanism.

## **E. OUTCOME OF THE REVIEW**

### **1. Format of the outcome**

26. The format of the outcome of the review will be a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.

### **2. Content of the outcome**

27. The universal periodic review is a cooperative mechanism. Its outcome may include, inter alia:

(a) An assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country;

(b) Sharing of best practices;

(c) An emphasis on enhancing cooperation for the promotion and protection of human rights;

(d) The provision of technical assistance and capacity-building in consultation with, and with the consent of, the country concerned;<sup>c</sup>

(e) Voluntary commitments and pledges made by the country under review.

### **3. Adoption of the outcome**

28. The country under review should be fully involved in the outcome.

29. Before the adoption of the outcome by the plenary of the Council, the State concerned should be offered the opportunity to present replies to questions or issues that were not sufficiently addressed during the interactive dialogue.

30. The State concerned and the member States of the Council, as well as observer States, will be given the opportunity to express their views on the outcome of the review before the plenary takes action on it.

31. Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary.

32. Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council.

## **F. FOLLOW-UP TO THE REVIEW**

33. The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders.

34. The subsequent review should focus, inter alia, on the implementation of the preceding outcome.

35. The Council should have a standing item on its agenda devoted to the universal periodic review.

36. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with, and with the consent of, the country concerned.

37. In considering the outcome of the universal periodic review, the Council will decide if and when any specific follow-up is necessary.

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<sup>c</sup> A decision should be taken by the Council on whether to resort to existing financing mechanisms or to create a new mechanism.

38. After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism.

## II. SPECIAL PROCEDURES

### A. SELECTION AND APPOINTMENT OF MANDATE-HOLDERS

39. The following general criteria will be of paramount importance while nominating, selecting and appointing mandate-holders: (a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.

40. Due consideration should be given to gender balance and equitable geographic representation, as well as to an appropriate representation of different legal systems.

41. Technical and objective requirements for eligible candidates for mandate-holders will be approved by the Council at its sixth session (first session of the second cycle), in order to ensure that eligible candidates are highly qualified individuals who possess established competence, relevant expertise and extensive professional experience in the field of human rights.

42. The following entities may nominate candidates as special procedures mandate-holders: (a) Governments; (b) Regional Groups operating within the United Nations human rights system; (c) international organizations or their offices (e.g. the Office of the High Commissioner for Human Rights); (d) non-governmental organizations; (e) other human rights bodies; (f) individual nominations.

43. The Office of the High Commissioner for Human Rights shall immediately prepare, maintain and periodically update a public list of eligible candidates in a standardized format, which shall include personal data, areas of expertise and professional experience. Upcoming vacancies of mandates shall be publicized.

44. The principle of non-accumulation of human rights functions at a time shall be respected.

45. A mandate-holder's tenure in a given function, whether a thematic or country mandate, will be no longer than six years (two terms of three years for thematic mandate-holders).

46. Individuals holding decision-making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the mandate shall be excluded. Mandate-holders will act in their personal capacity.

47. A consultative group would be established to propose to the President, at least one month before the beginning of the session in which the Council would consider the selection of mandate-holders, a list of candidates who possess the highest qualifications for the mandates in question and meet the general criteria and particular requirements.

48. The consultative group shall also give due consideration to the exclusion of nominated candidates from the public list of eligible candidates brought to its attention.

49. At the beginning of the annual cycle of the Council, Regional Groups would be invited to appoint a member of the consultative group, who would serve in his/her personal capacity. The Group will be assisted by the Office of the High Commissioner for Human Rights.

50. The consultative group will consider candidates included in the public list; however, under exceptional circumstances and if a particular post justifies it, the Group may consider additional nominations with equal or more suitable qualifications for the post. Recommendations to the President shall be public and substantiated.

51. The consultative group should take into account, as appropriate, the views of stakeholders, including the current or outgoing mandate-holders, in determining the necessary expertise, experience, skills, and other relevant requirements for each mandate.

52. On the basis of the recommendations of the consultative group and following broad consultations, in particular through the regional coordinators, the President of the Council will identify an appropriate candidate for each vacancy. The President will present to member States and observ-

ers a list of candidates to be proposed at least two weeks prior to the beginning of the session in which the Council will consider the appointments.

53. If necessary, the President will conduct further consultations to ensure the endorsement of the proposed candidates. The appointment of the special procedures mandate-holders will be completed upon the subsequent approval of the Council. Mandate-holders shall be appointed before the end of the session.

### **B. REVIEW, RATIONALIZATION AND IMPROVEMENT OF MANDATES**

54. The review, rationalization and improvement of mandates, as well as the creation of new ones, must be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

55. The review, rationalization and improvement of each mandate would take place in the context of the negotiations of the relevant resolutions. An assessment of the mandate may take place in a separate segment of the interactive dialogue between the Council and special procedures mandate-holders.

56. The review, rationalization and improvement of mandates would focus on the relevance, scope and contents of the mandates, having as a framework the internationally recognized human rights standards, the system of special procedures and General Assembly resolution 60/251.

57. Any decision to streamline, merge or possibly discontinue mandates should always be guided by the need for improvement of the enjoyment and protection of human rights.

58. The Council should always strive for improvements:

(a) Mandates should always offer a clear prospect of an increased level of human rights protection and promotion as well as being coherent within the system of human rights;

(b) Equal attention should be paid to all human rights. The balance of thematic mandates should broadly reflect the accepted equal importance of civil, political, economic, social and cultural rights, including the right to development;

(c) Every effort should be made to avoid unnecessary duplication;

(d) Areas which constitute thematic gaps will be identified and addressed, including by means other than the creation of special procedures mandates, such as by expanding an existing mandate, bringing a cross-cutting issue to the attention of mandate-holders or by requesting a joint action to the relevant mandate-holders;

(e) Any consideration of merging mandates should have regard to the content and predominant functions of each mandate, as well as to the workload of individual mandate-holders;

(f) In creating or reviewing mandates, efforts should be made to identify whether the structure of the mechanism (expert, rapporteur or working group) is the most effective in terms of increasing human rights protection;

(g) New mandates should be as clear and specific as possible, so as to avoid ambiguity.

59. It should be considered desirable to have a uniform nomenclature of mandate-holders, titles of mandates as well as a selection and appointment process, to make the whole system more understandable.

60. Thematic mandate periods will be of three years. Country mandate periods will be of one year.

61. Mandates included in Appendix I, where applicable, will be renewed until the date on which they are considered by the Council according to the programme of work.<sup>d</sup>

62. Current mandate-holders may continue serving, provided they have not exceeded the six-year term limit (Appendix II). On an exceptional basis, the term of those mandate-holders who have served more than six years may be extended until the relevant mandate is considered by the Council and the selection and appointment process has concluded.

63. Decisions to create, review or discontinue country mandates should also take into account the principles of cooperation and genuine dialogue aimed at strengthening the capacity of Member States to comply with their human rights obligations.

64. In case of situations of violations of human rights or a lack of cooperation that require the Council's attention, the principles of objectivity, non-selectivity, and the elimination of double standards and politicization should apply.

### III. HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

65. The Human Rights Council Advisory Committee (hereinafter "the Advisory Committee"), composed of 18 experts serving in their personal capacity, will function as a think-tank for the Council and work at its direction. The establishment of this subsidiary body and its functioning will be executed according to the guidelines stipulated below.

#### A. NOMINATION

66. All Member States of the United Nations may propose or endorse candidates from their own region. When selecting their candidates, States should consult their national human rights institutions and civil society organizations and, in this regard, include the names of those supporting their candidates.

67. The aim is to ensure that the best possible expertise is made available to the Council. For this purpose, technical and objective requirements for the submission of candidatures will be established and approved by the Council at its sixth session (first session of the second cycle). These should include:

- (a) Recognized competence and experience in the field of human rights;
- (b) High moral standing;
- (c) Independence and impartiality.

68. Individuals holding decision-making positions in Government or in any other organization or entity which might give rise to a conflict of interest with the responsibilities inherent in the mandate shall be excluded. Elected members of the Committee will act in their personal capacity.

69. The principle of non-accumulation of human rights functions at the same time shall be respected.

#### B. ELECTION

70. The Council shall elect the members of the Advisory Committee, in secret ballot, from the list of candidates whose names have been presented in accordance with the agreed requirements.

<sup>d</sup> Country mandates meet the following criteria:

- There is a pending mandate of the Council to be accomplished; or
- There is a pending mandate of the General Assembly to be accomplished; or
- The nature of the mandate is for advisory services and technical assistance.

71. The list of candidates shall be closed two months prior to the election date. The Secretariat will make available the list of candidates and relevant information to member States and to the public at least one month prior to their election.

72. Due consideration should be given to gender balance and appropriate representation of different civilizations and legal systems.

73. The geographic distribution will be as follows:

African States: 5

Asian States: 5

Eastern European States: 2

Latin American and Caribbean States: 3

Western European and other States: 3

74. The members of the Advisory Committee shall serve for a period of three years. They shall be eligible for re-election once. In the first term, one third of the experts will serve for one year and another third for two years. The staggering of terms of membership will be defined by the drawing of lots.

### **C. FUNCTIONS**

75. The function of the Advisory Committee is to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice. Further, such expertise shall be rendered only upon the latter's request, in compliance with its resolutions and under its guidance.

76. The Advisory Committee should be implementation-oriented and the scope of its advice should be limited to thematic issues pertaining to the mandate of the Council; namely promotion and protection of all human rights.

77. The Advisory Committee shall not adopt resolutions or decisions. The Advisory Committee may propose within the scope of the work set out by the Council, for the latter's consideration and approval, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council.

78. The Council shall issue specific guidelines for the Advisory Committee when it requests a substantive contribution from the latter and shall review all or any portion of those guidelines if it deems necessary in the future.

### **D. METHODS OF WORK**

79. The Advisory Committee shall convene up to two sessions for a maximum of 10 working days per year. Additional sessions may be scheduled on an ad hoc basis with prior approval of the Council.

80. The Council may request the Advisory Committee to undertake certain tasks that could be performed collectively, through a smaller team or individually. The Advisory Committee will report on such efforts to the Council.

81. Members of the Advisory Committee are encouraged to communicate between sessions, individually or in teams. However, the Advisory Committee shall not establish subsidiary bodies unless the Council authorizes it to do so.

82. In the performance of its mandate, the Advisory Committee is urged to establish interaction with States, national human rights institutions, non-governmental organizations and other civil society entities in accordance with the modalities of the Council.

83. Member States and observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations shall be entitled to participate in the work of the Advi-

sory Committee based on arrangements, including Economic and Social Council resolution 1996/31 and practices observed by the Commission on Human Rights and the Council, while ensuring the most effective contribution of these entities.

84. The Council will decide at its sixth session (first session of its second cycle) on the most appropriate mechanisms to continue the work of the Working Groups on Indigenous Populations; Contemporary Forms of Slavery; Minorities; and the Social Forum.

#### **IV. COMPLAINT PROCEDURE**

##### **A. OBJECTIVE AND SCOPE**

85. A complaint procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

86. Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000 served as a working basis and was improved where necessary, so as to ensure that the complaint procedure is impartial, objective, efficient, victims-oriented and conducted in a timely manner. The procedure will retain its confidential nature, with a view to enhancing cooperation with the State concerned.

##### **B. ADMISSIBILITY CRITERIA FOR COMMUNICATIONS**

87. A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible, provided that:

(a) It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;

(b) It gives a factual description of the alleged violations, including the rights which are alleged to be violated;

(c) Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;

(d) It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non-governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;

(e) It is not exclusively based on reports disseminated by mass media;

(f) It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;

(g) Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.

88. National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

##### **C. WORKING GROUPS**

89. Two distinct working groups shall be established with the mandate to examine the communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.

90. Both working groups shall, to the greatest possible extent, work on the basis of consensus. In the absence of consensus, decisions shall be taken by simple majority of the votes. They may establish their own rules of procedure.

### **1. Working Group on Communications: composition, mandate and powers**

91. The Human Rights Council Advisory Committee shall appoint five of its members, one from each Regional Group, with due consideration to gender balance, to constitute the Working Group on Communications.

92. In case of a vacancy, the Advisory Committee shall appoint an independent and highly qualified expert of the same Regional Group from the Advisory Committee.

93. Since there is a need for independent expertise and continuity with regard to the examination and assessment of communications received, the independent and highly qualified experts of the Working Group on Communications shall be appointed for three years. Their mandate is renewable only once.

94. The Chairperson of the Working Group on Communications is requested, together with the secretariat, to undertake an initial screening of communications received, based on the admissibility criteria, before transmitting them to the States concerned. Manifestly ill-founded or anonymous communications shall be screened out by the Chairperson and shall therefore not be transmitted to the State concerned. In a perspective of accountability and transparency, the Chairperson of the Working Group on Communications shall provide all its members with a list of all communications rejected after initial screening. This list should indicate the grounds of all decisions resulting in the rejection of a communication. All other communications, which have not been screened out, shall be transmitted to the State concerned, so as to obtain the views of the latter on the allegations of violations.

95. The members of the Working Group on Communications shall decide on the admissibility of a communication and assess the merits of the allegations of violations, including whether the communication alone or in combination with other communications appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. The Working Group on Communications shall provide the Working Group on Situations with a file containing all admissible communications as well as recommendations thereon. When the Working Group on Communications requires further consideration or additional information, it may keep a case under review until its next session and request such information from the State concerned. The Working Group on Communications may decide to dismiss a case. All decisions of the Working Group on Communications shall be based on a rigorous application of the admissibility criteria and duly justified.

### **2. Working Group on Situations: composition, mandate and powers**

96. Each Regional Group shall appoint a representative of a member State of the Council, with due consideration to gender balance, to serve on the Working Group on Situations. Members shall be appointed for one year. Their mandate may be renewed once, if the State concerned is a member of the Council.

97. Members of the Working Group on Situations shall serve in their personal capacity. In order to fill a vacancy, the respective Regional Group to which the vacancy belongs, shall appoint a representative from member States of the same Regional Group.

98. The Working Group on Situations is requested, on the basis of the information and recommendations provided by the Working Group on Communications, to present the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and to make recommendations to the Council on the course of action to take, normally in the form of a draft resolution or decision with respect to the situations referred to it. When the Working Group on Situations requires further consideration or additional information,

its members may keep a case under review until its next session. The Working Group on Situations may also decide to dismiss a case.

99. All decisions of the Working Group on Situations shall be duly justified and indicate why the consideration of a situation has been discontinued or action recommended thereon. Decisions to discontinue should be taken by consensus; if that is not possible, by simple majority of the votes.

#### **D. WORKING MODALITIES AND CONFIDENTIALITY**

100. Since the complaint procedure is to be, *inter alia*, victims-oriented and conducted in a confidential and timely manner, both Working Groups shall meet at least twice a year for five working days each session, in order to promptly examine the communications received, including replies of States thereon, and the situations of which the Council is already seized under the complaint procedure.

101. The State concerned shall cooperate with the complaint procedure and make every effort to provide substantive replies in one of the United Nations official languages to any of the requests of the Working Groups or the Council. The State concerned shall also make every effort to provide a reply not later than three months after the request has been made. If necessary, this deadline may however be extended at the request of the State concerned.

102. The Secretariat is requested to make the confidential files available to all members of the Council, at least two weeks in advance, so as to allow sufficient time for the consideration of the files.

103. The Council shall consider consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms brought to its attention by the Working Group on Situations as frequently as needed, but at least once a year.

104. The reports of the Working Group on Situations referred to the Council shall be examined in a confidential manner, unless the Council decides otherwise. When the Working Group on Situations recommends to the Council that it consider a situation in a public meeting, in particular in the case of manifest and unequivocal lack of cooperation, the Council shall consider such recommendation on a priority basis at its next session.

105. So as to ensure that the complaint procedure is victims-oriented, efficient and conducted in a timely manner, the period of time between the transmission of the complaint to the State concerned and consideration by the Council shall not, in principle, exceed 24 months.

#### **E. INVOLVEMENT OF THE COMPLAINANT AND OF THE STATE CONCERNED**

106. The complaint procedure shall ensure that both the author of a communication and the State concerned are informed of the proceedings at the following key stages:

(a) When a communication is deemed inadmissible by the Working Group on Communications or when it is taken up for consideration by the Working Group on Situations; or when a communication is kept pending by one of the Working Groups or by the Council;

(b) At the final outcome.

107. In addition, the complainant shall be informed when his/her communication is registered by the complaint procedure.

108. Should the complainant request that his/her identity be kept confidential, it will not be transmitted to the State concerned.

#### **F. MEASURES**

109. In accordance with established practice the action taken in respect of a particular situation should be one of the following options:

(a) To discontinue considering the situation when further consideration or action is not warranted;

(b) To keep the situation under review and request the State concerned to provide further information within a reasonable period of time;

(c) To keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council;

(d) To discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same;

(e) To recommend to OHCHR to provide technical cooperation, capacity-building assistance or advisory services to the State concerned.

## **V. AGENDA AND FRAMEWORK FOR THE PROGRAMME OF WORK**

### **A. PRINCIPLES**

Universality

Impartiality

Objectivity

Non-selectiveness

Constructive dialogue and cooperation

Predictability

Flexibility

Transparency

Accountability

Balance

Inclusive/comprehensive

Gender perspective

Implementation and follow-up of decisions

### **B. AGENDA**

- Item 1. Organizational and procedural matters
- Item 2. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General
- Item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development
- Item 4. Human rights situations that require the Council's attention
- Item 5. Human rights bodies and mechanisms
- Item 6. Universal Periodic Review
- Item 7. Human rights situation in Palestine and other occupied Arab territories
- Item 8. Follow-up and implementation of the Vienna Declaration and Programme of Action
- Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action
- Item 10. Technical assistance and capacity-building

### **C. FRAMEWORK FOR THE PROGRAMME OF WORK**

- Item 1. Organizational and procedural matters  
Election of the Bureau

- Adoption of the annual programme of work
- Adoption of the programme of work of the session, including other business
- Selection and appointment of mandate-holders
- Election of members of the Human Rights Council Advisory Committee
- Adoption of the report of the session
- Adoption of the annual report
- Item 2. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General
  - Presentation of the annual report and updates
- Item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development
  - Economic, social and cultural rights
  - Civil and political rights
  - Rights of peoples, and specific groups and individuals
  - Right to development
  - Interrelation of human rights and human rights thematic issues
- Item 4. Human rights situations that require the Council's attention
- Item 5. Human rights bodies and mechanisms
  - Report of the Human Rights Council Advisory Committee
  - Report of the complaint procedure
- Item 6. Universal Periodic Review
- Item 7. Human rights situation in Palestine and other occupied Arab territories
  - Human rights violations and implications of the Israeli occupation of Palestine and other occupied Arab territories
  - Right to self-determination of the Palestinian people
- Item 8. Follow-up and implementation of the Vienna Declaration and Programme of Action
- Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action
- Item 10. Technical assistance and capacity-building

## **VI. METHODS OF WORK**

110. The methods of work, pursuant to General Assembly resolution 60/251 should be transparent, impartial, equitable, fair, pragmatic; lead to clarity, predictability, and inclusiveness. They may also be updated and adjusted over time.

### **A. INSTITUTIONAL ARRANGEMENTS**

#### **1. Briefings on prospective resolutions or decisions**

111. The briefings on prospective resolutions or decisions would be informative only, whereby delegations would be apprised of resolutions and/or decisions tabled or intended to be tabled. These briefings will be organized by interested delegations.

## **2. President's open-ended information meetings on resolutions, decisions and other related business**

112. The President's open-ended information meetings on resolutions, decisions and other related business shall provide information on the status of negotiations on draft resolutions and/or decisions so that delegations may gain a bird's eye view of the status of such drafts. The consultations shall have a purely informational function, combined with information on the extranet, and be held in a transparent and inclusive manner. They shall not serve as a negotiating forum.

## **3. Informal consultations on proposals convened by main sponsors**

113. Informal consultations shall be the primary means for the negotiation of draft resolutions and/or decisions, and their convening shall be the responsibility of the sponsor(s). At least one informal open-ended consultation should be held on each draft resolution and/or decision before it is considered for action by the Council. Consultations should, as much as possible, be scheduled in a timely, transparent and inclusive manner that takes into account the constraints faced by delegations, particularly smaller ones.

## **4. Role of the Bureau**

114. The Bureau shall deal with procedural and organizational matters. The Bureau shall regularly communicate the contents of its meetings through a timely summary report.

## **5. Other work formats may include panel debates, seminars and round tables**

115. Utilization of these other work formats, including topics and modalities, would be decided by the Council on a case-by-case basis. They may serve as tools of the Council for enhancing dialogue and mutual understanding on certain issues. They should be utilized in the context of the Council's agenda and annual programme of work, and reinforce and/or complement its intergovernmental nature. They shall not be used to substitute or replace existing human rights mechanisms and established methods of work.

## **6. High-Level Segment**

116. The High-Level Segment shall be held once a year during the main session of the Council. It shall be followed by a general segment wherein delegations that did not participate in the High-Level Segment may deliver general statements.

## **B. WORKING CULTURE**

117. There is a need for:

- (a) Early notification of proposals;
- (b) Early submission of draft resolutions and decisions, preferably by the end of the penultimate week of a session;
- (c) Early distribution of all reports, particularly those of special procedures, to be transmitted to delegations in a timely fashion, at least 15 days in advance of their consideration by the Council, and in all official United Nations languages;
- (d) Proposers of a country resolution to have the responsibility to secure the broadest possible support for their initiatives (preferably 15 members), before action is taken;
- (e) Restraint in resorting to resolutions, in order to avoid proliferation of resolutions without prejudice to the right of States to decide on the periodicity of presenting their draft proposals by:

- (i) Minimizing unnecessary duplication of initiatives with the General Assembly/Third Committee;
- (ii) Clustering of agenda items;
- (iii) Staggering the tabling of decisions and/or resolutions and consideration of action on agenda items/issues.

### **C. OUTCOMES OTHER THAN RESOLUTIONS AND DECISIONS**

118. These may include recommendations, conclusions, summaries of discussions and President's Statement. As such outcomes would have different legal implications, they should supplement and not replace resolutions and decisions.

### **D. SPECIAL SESSIONS OF THE COUNCIL**

119. The following provisions shall complement the general framework provided by General Assembly resolution 60/251 and the rules of procedure of the Human Rights Council.

120. The rules of procedure of special sessions shall be in accordance with the rules of procedure applicable for regular sessions of the Council.

121. The request for the holding of a special session, in accordance with the requirement established in paragraph 10 of General Assembly resolution 60/251, shall be submitted to the President and to the secretariat of the Council. The request shall specify the item proposed for consideration and include any other relevant information the sponsors may wish to provide.

122. The special session shall be convened as soon as possible after the formal request is communicated, but, in principle, not earlier than two working days, and not later than five working days after the formal receipt of the request. The duration of the special session shall not exceed three days (six working sessions), unless the Council decides otherwise.

123. The secretariat of the Council shall immediately communicate the request for the holding of a special session and any additional information provided by the sponsors in the request, as well as the date for the convening of the special session, to all United Nations Member States and make the information available to the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as to non-governmental organizations in consultative status by the most expedient and expeditious means of communication. Special session documentation, in particular draft resolutions and decisions, should be made available in all official United Nations languages to all States in an equitable, timely and transparent manner.

124. The President of the Council should hold open-ended informative consultations before the special session on its conduct and organization. In this regard, the secretariat may also be requested to provide additional information, including, on the methods of work of previous special sessions.

125. Members of the Council, concerned States, observer States, specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations in consultative status may contribute to the special session in accordance with the rules of procedure of the Council.

126. If the requesting or other States intend to present draft resolutions or decisions at the special session, texts should be made available in accordance with the Council's relevant rules of procedure. Nevertheless, sponsors are urged to present such texts as early as possible.

127. The sponsors of a draft resolution or decision should hold open-ended consultations on the text of their draft resolution(s) or decision(s) with a view to achieving the widest participation in their consideration and, if possible, achieving consensus on them.

128. A special session should allow participatory debate, be results-oriented and geared to achieving practical outcomes, the implementation of which can be monitored and reported on at the following regular session of the Council for possible follow-up decision.

**VII. RULES OF PROCEDURE<sup>e</sup>****SESSIONS***Rules of procedure***Rule 1**

The Human Rights Council shall apply the rules of procedure established for the Main Committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council.

**REGULAR SESSIONS***Number of sessions***Rule 2**

The Human Rights Council shall meet regularly throughout the year and schedule no fewer than three sessions per Council year, including a main session, for a total duration of no less than 10 weeks.

*Assumption of membership***Rule 3**

Newly-elected member States of the Human Rights Council shall assume their membership on the first day of the Council year, replacing member States that have concluded their respective membership terms.

*Place of meeting***Rule 4**

The Human Rights Council shall be based in Geneva.

**SPECIAL SESSIONS***Convening of special sessions***Rule 5**

The rules of procedure of special sessions of the Human Rights Council will be the same as the rules of procedure applicable for regular sessions of the Human Rights Council.

**Rule 6**

The Human Rights Council shall hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council.

**PARTICIPATION OF AND CONSULTATION WITH OBSERVERS OF THE COUNCIL****Rule 7**

(a) The Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities.

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<sup>e</sup> Figures indicated in square brackets refer to identical or corresponding rules of the General Assembly or its Main Committees (A/520/Rev.16).

(b) Participation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005, while ensuring the most effective contribution of these entities.

### **ORGANIZATION OF WORK AND AGENDA FOR REGULAR SESSIONS**

#### *Organizational meetings*

#### **Rule 8**

(a) At the beginning of each Council year, the Council shall hold an organizational meeting to elect its Bureau and to consider and adopt the agenda, programme of work, and calendar of regular sessions for the Council year indicating, if possible, a target date for the conclusion of its work, the approximate dates of consideration of items and the number of meetings to be allocated to each item.

(b) The President of the Council shall also convene organizational meetings two weeks before the beginning of each session and, if necessary, during the Council sessions to discuss organizational and procedural issues pertinent to that session.

### **PRESIDENT AND VICE-PRESIDENTS**

#### *Elections*

#### **Rule 9**

(a) At the beginning of each Council year, at its organizational meeting, the Council shall elect, from among the representatives of its members, a President and four Vice-Presidents. The President and the Vice-Presidents shall constitute the Bureau. One of the Vice-Presidents shall serve as Rapporteur.

(b) In the election of the President of the Council, regard shall be had for the equitable geographical rotation of this office among the following Regional Groups: African States, Asian States, Eastern European States, Latin American and Caribbean States, and Western European and other States. The four Vice-Presidents of the Council shall be elected on the basis of equitable geographical distribution from the Regional Groups other than the one to which the President belongs. The selection of the Rapporteur shall be based on geographic rotation.

#### *Bureau*

#### **Rule 10**

The Bureau shall deal with procedural and organizational matters.

#### *Term of office*

#### **Rule 11**

The President and the Vice-Presidents shall, subject to rule 13, hold office for a period of one year. They shall not be eligible for immediate re-election to the same post.

#### *Absence of officers*

#### **Rule 12 [105]**

If the President finds it necessary to be absent during a meeting or any part thereof, he/she shall designate one of the Vice-Presidents to take his/her place. A Vice-President acting as President shall have the same powers and duties as the President. If the President ceases to hold office pursuant to rule 13, the remaining members of the Bureau shall designate one of the Vice-Presidents to take his/her place until the election of a new President.

#### *Replacement of the President or a Vice-President*

#### **Rule 13**

If the President or any Vice-President ceases to be able to carry out his/her functions or ceases to be a representative of a member of the Council, or if the Member of the United Nations of which he/she is a representative ceases to be a member of the Council, he/she shall cease to hold such office and a new President or Vice-President shall be elected for the unexpired term.

**SECRETARIAT***Duties of the secretariat***Rule 14 [47]**

The Office of the United Nations High Commissioner for Human Rights shall act as secretariat for the Council. In this regard, it shall receive, translate, print and circulate in all official United Nations languages, documents, reports and resolutions of the Council, its committees and its organs; interpret speeches made at the meetings; prepare, print and circulate the records of the session; have the custody and proper preservation of the documents in the archives of the Council; distribute all documents of the Council to the members of the Council and observers and, generally, perform all other support functions which the Council may require.

**RECORDS AND REPORT***Report to the General Assembly***Rule 15**

The Council shall submit an annual report to the General Assembly.

**PUBLIC AND PRIVATE MEETINGS OF THE HUMAN RIGHTS COUNCIL***General principles***Rule 16 [60]**

The meetings of the Council shall be held in public unless the Council decides that exceptional circumstances require the meeting be held in private.

*Private meetings***Rule 17 [61]**

All decisions of the Council taken at a private meeting shall be announced at an early public meeting of the Council.

**CONDUCT OF BUSINESS***Working groups and other arrangements***Rule 18**

The Council may set up working groups and other arrangements. Participation in these bodies shall be decided upon by the members, based on rule 7. The rules of procedure of these bodies shall follow those of the Council, as applicable, unless decided otherwise by the Council.

*Quorum***Rule 19 [67]**

The President may declare a meeting open and permit the debate to proceed when at least one third of the members of the Council are present. The presence of a majority of the members shall be required for any decision to be taken.

*Majority required***Rule 20 [125]**

Decisions of the Council shall be made by a simple majority of the members present and voting, subject to rule 19.

**[Appendices I and II not published herein.]**

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## 50. STRENGTHENING AND ENHANCING THE EFFECTIVE FUNCTIONING OF THE HUMAN RIGHTS TREATY BODY SYSTEM

General Assembly resolution 68/268 of 9 April 2014

*The General Assembly,*

*Reaffirming* the purposes and principles of the Charter of the United Nations, and recalling the Universal Declaration of Human Rights and relevant international human rights instruments,

*Underlining* the obligation that States have to promote and protect human rights and to carry out the responsibilities that they have undertaken under international law, especially the Charter, as well as various international instruments in the field of human rights, including under international human rights treaties,

*Recalling* Economic and Social Council resolution 1985/17 of 28 May 1985,

*Recalling also* its resolution 66/254 of 23 February 2012, by which it launched the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system, and its resolutions 66/295 of 17 September 2012 and 68/2 of 20 September 2013, by which it extended the intergovernmental process,

*Recalling further* its relevant resolutions on the human rights treaty bodies,

*Reaffirming* that the full and effective implementation of international human rights instruments by States parties is of major importance for the efforts of the United Nations to promote universal respect for and observance of human rights and fundamental freedoms and that the effective functioning of the human rights treaty body system is indispensable for the full and effective implementation of such instruments,

*Recognizing* the important, valuable and unique role and contribution of each of the human rights treaty bodies in the promotion and protection of human rights and fundamental freedoms, including through their examination of the progress made by States parties to the respective human rights treaties in fulfilling their relevant obligations and their provision of recommendations to States parties on the implementation of such treaties,

*Reaffirming* the importance of the independence of the human rights treaty bodies,

*Reaffirming also* that the independence and impartiality of members of the human rights treaty bodies is essential for the performance of their duties and responsibilities in line with the respective treaties, and recalling the requirement that they be individuals of high moral standing serving in their personal capacity,

*Recognizing* that States have a legal obligation under the international human rights treaties to which they are party to periodically submit to the relevant human rights treaty bodies reports on the measures they have taken to give effect to the provisions of the relevant treaties, and noting the need to increase the level of compliance in this regard,

*Recognizing also* that the promotion and protection of human rights should be based on the principle of cooperation and genuine dialogue and be aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings,

*Emphasizing* the importance of multilingualism in the activities of the United Nations, including those linked to the promotion and protection of human rights, and reaffirming the paramount importance of the equality of the six official languages of the United Nations for the effective functioning of the human rights treaty bodies,

*Recognizing* that the current allocation of resources has not allowed the human rights treaty body system to work in a sustainable and effective manner, and in this regard also recognizing the importance of providing, under the existing procedures of the General Assembly, adequate funding to the human rights treaty body system from the regular budget of the United Nations,

*Recognizing also* the importance of continued efforts to improve the efficiency of the working methods of the human rights treaty body system,

*Recognizing further* the importance and added value of capacity-building and technical assistance provided in consultation with and with the consent of the States parties concerned to ensure the full and effective implementation of and compliance with the international human rights treaties,

*Recalling* that certain international human rights instruments include provisions regarding the venue of the meetings of the committees, and mindful of the importance of the full engagement of all States parties in the interactive dialogue with the human rights treaty bodies,

*Taking note* of the reports of the Secretary-General on measures to improve further the effectiveness, harmonization and reform of the human rights treaty body system,

*Noting with appreciation* the initiative and efforts of the United Nations High Commissioner for Human Rights, in the form of a multi-stakeholder consultation approach for reflecting on how to streamline and strengthen the human rights treaty body system,

*Noting* that the multi-stakeholder approach consisted of a number of meetings involving representatives of Member States, human rights treaty bodies, national human rights institutions, non-governmental organizations and academia, including events hosted by a number of Member States,

*Taking note* of the report of the High Commissioner on strengthening the United Nations human rights treaty body system, which includes recommendations addressed to different stakeholders,

*Taking note also* of the report of the co-facilitators on the open-ended intergovernmental process on how to strengthen and enhance the effective functioning of the human rights treaty body system,

*Expressing its appreciation* for the efforts of the President of the General Assembly and the co-facilitators in the framework of the intergovernmental process,

*Noting* the participation and contributions of Member States in the intergovernmental process, as well as experts of the human rights treaty bodies, national human rights institutions, the Office of the United Nations High Commissioner for Human Rights and nongovernmental organizations,

*Emphasizing* that strengthening and enhancing the effective functioning of the human rights treaty body system is a common goal shared by stakeholders who have different legal competencies in accordance with the Charter and the international human rights instruments establishing treaty bodies, and recognizing in this regard the ongoing efforts of different treaty bodies towards strengthening and enhancing their effective functioning,

1. *Encourages* the human rights treaty bodies to offer to States parties for their consideration the simplified reporting procedure and to set a limit on the number of the questions included;

2. *Encourages* States parties to consider the possibility of using the simplified reporting procedure, when offered, to facilitate the preparation of their reports and the interactive dialogue on the implementation of their treaty obligations;

3. *Also encourages* States parties to consider submitting a common core document and updating it as appropriate, as a comprehensive document or in the form of an addendum to the original document, bearing in mind the most recent developments in the particular State party, and in this regard encourages the human rights treaty bodies to further elaborate their existing guidelines on the common core document in a clear and consistent manner;

4. *Decides*, without prejudice to the formulation of the annual report of each human rights treaty body as laid out in the respective treaty, that the annual reports of treaty bodies are not to contain documents published separately and referenced therein;

5. *Encourages* the human rights treaty bodies to collaborate towards the elaboration of an aligned methodology for their constructive dialogue with the States parties, bearing in mind the views of States parties as well as the specificity of the respective committees and of their mandates,

with the aim of making the dialogue more effective, maximizing the use of the time available and allowing for a more interactive and productive dialogue with States parties;

6. *Also encourages* the human rights treaty bodies to adopt short, focused and concrete concluding observations, including the recommendations therein, that reflect the dialogue with the relevant State party, and to this end further encourages them to develop common guidelines for the elaboration of such concluding observations, bearing in mind the specificity of the respective committees and of their mandates, as well as the views of States parties;

7. *Recommends* the more efficient and effective use of the meetings of States parties, inter alia, by proposing and organizing discussions on matters related to the implementation of each treaty;

8. *Strongly condemns* all acts of intimidation and reprisals against individuals and groups for their contribution to the work of the human rights treaty bodies, and urges States to take all appropriate action, consistent with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and all other relevant human rights instruments, to prevent and eliminate such human rights violations;

9. *Encourages* the human rights treaty bodies to continue to enhance their efforts towards achieving greater efficiency, transparency, effectiveness and harmonization through their working methods, within their respective mandates, and in this regard encourages the treaty bodies to continue to review good practices regarding the application of rules of procedure and working methods in their ongoing efforts towards strengthening and enhancing their effective functioning, bearing in mind that these activities should fall under the provisions of the respective treaties, thus not creating new obligations for States parties;

10. *Encourages* States parties to continue their efforts to nominate experts of high moral standing and recognized competence and experience in the field of human rights, in particular in the field covered by the relevant treaty, and, as appropriate, to consider adopting national policies or processes with respect to the nomination of experts as candidates for human rights treaty bodies;

11. *Recommends* that the Economic and Social Council consider replacing the existing procedure for the election of experts to the Committee on Economic, Social and Cultural Rights with a meeting of States parties to the International Covenant on Economic, Social and Cultural Rights, while preserving the current structure, organization and administrative arrangement of the Committee as set forth in Council resolution 1985/17;

12. *Requests* the Office of the United Nations High Commissioner for Human Rights to include in the documentation prepared for elections of members of human rights treaty bodies at meetings of States parties an information note on the current situation with respect to the composition of the treaty body, reflecting the balance in terms of geographical distribution and gender representation, professional background and different legal systems, as well as the tenure of current members;

13. *Encourages* States parties, in the election of treaty body experts, to give due consideration, as stipulated in the relevant human rights instruments, to equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the human rights treaty bodies;

14. *Encourages* the human rights treaty bodies to develop an aligned consultation process for the elaboration of general comments that provides for consultation with States parties in particular and bears in mind the views of other stakeholders during the elaboration of new general comments;

15. *Decides*, in line with established practice with respect to other United Nations documentation, to establish a limit of 10,700 words for each document produced by the human rights treaty bodies, and further recommends that word limits also be applied for relevant stakeholders;

16. *Also decides* to establish word limits for all State party documentation submitted to the human rights treaty body system, including State party reports, of 31,800 words for initial reports, 21,200 words for subsequent periodic reports and 42,400 words for common core documents, as endorsed by the human rights treaty bodies, and calls upon the treaty bodies to set a limit on the

number of questions posed, focusing on areas seen as priority issues to ensure the ability of States parties to meet the aforementioned word limits;

17. *Requests* the Secretary-General, through the Office of the High Commissioner, to support States parties in building the capacity to implement their treaty obligations and to provide in this regard advisory services, technical assistance and capacity-building, in line with the mandate of the Office, in consultation with and with the consent of the State concerned, by:

(a) Deploying a dedicated human rights capacity-building officer in every regional office of the Office of the High Commissioner, as required;

(b) Strengthening cooperation with relevant regional human rights mechanisms within regional organizations to provide technical assistance to States in reporting to human rights treaty bodies, including through the training of trainers;

(c) Developing a roster of experts on treaty body reporting, reflecting geographical distribution and gender representation, professional background and different legal systems;

(d) Providing direct assistance to States parties at the national level by building and developing institutional capacity for reporting and strengthening technical knowledge through ad hoc training on reporting guidelines at the national level;

(e) Facilitating the sharing of best practices among States parties;

18. *Underlines* the need to provide further support to States parties through, inter alia, the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights and in conjunction with the provision of technical assistance, with a focus on measures to build sustainable capacity in their activities to fulfil their treaty obligations, and encourages all Member States to contribute to the Fund;

19. *Encourages* the Office of the High Commissioner to work with the agencies, funds and programmes of the United Nations system and United Nations country teams, in line with their respective mandates and at the request of States parties, to assist States parties in fulfilling their obligations under international human rights treaties through:

(a) The provision of advisory services, technical assistance and capacity-building to States parties for the preparation of reports to human rights treaty bodies;

(b) The development of programmatic responses, in close coordination with the relevant States parties, to support their compliance with treaty obligations;

20. *Recognizes* that some States parties consider that they would benefit from improved coordination of reporting at the national level, and requests the Office of the High Commissioner to include among its technical assistance activities relevant assistance in this regard, at the request of a State party, based on best practices;

21. *Encourages* Member States to provide voluntary funds to facilitate the engagement of States parties, in particular those without representation in Geneva, with the human rights treaty bodies;

22. *Decides* in principle, with the aim of enhancing the accessibility and visibility of the human rights treaty bodies and in line with the report of the Committee on Information on its thirty-fifth session, to webcast, as soon as feasible, the public meetings of the treaty bodies, and requests the Department of Public Information of the Secretariat to report on the feasibility of providing, in all of the official languages used in the respective committees, live webcasts and video archives that are available, accessible, searchable and secure, including from cyber-attacks, of relevant meetings of the treaty bodies;

23. *Requests* the Office of the High Commissioner, with the assistance of United Nations country teams through their existing videoconferencing facilities, as appropriate, to provide, at the request of a State party, the opportunity for members of its official delegation not present at the

meeting to participate in the consideration of the report of that State party by means of videoconference in order to facilitate wider participation in the dialogue;

24. *Underlines* the need for summary records of the dialogue of human rights treaty bodies with States parties, and in this regard decides to issue summary records in one of the working languages of the United Nations and not to translate the pending backlog of summary records, taking into account that these measures will not constitute a precedent, given the special nature of the treaty bodies, and bearing in mind the aim of providing, through alternative methods, verbatim records of the meetings of the treaty bodies in all of the official languages of the United Nations;

25. *Decides* that a summary record of a meeting of a State party with a treaty body, at the request of any State party, shall be translated into the official language of the United Nations used by that State party;

26. *Also decides* that the allocation of meeting time to the treaty bodies will be identified in the following manner, and requests the Secretary-General to provide the corresponding financial and human resources:

(a) An allocation of the number of weeks that each treaty body requires to review the reports of States parties it can expect annually, using the average number of reports received per committee during the period from 2009 to 2012,<sup>a</sup> on the basis of an assumed attainable rate of review of at least 2.5 reports per week and where relevant at least 5 reports under the Optional Protocols to the human rights treaties per week;

(b) A further allocation of two weeks of meeting time per committee to allow for mandated activities, plus an allocation of additional meeting time to those committees dealing with individual communications, on the basis of each such communication requiring 1.3 hours of meeting time for review and the average number of such communications received per year by those committees;

(c) An additional margin to prevent the recurrence of backlogs is established as a target 5 per cent increase in reporting compliance allocated among the committees to address their expected workload, at the beginning of each biennium, with a temporary target increase of 15 per cent for the period from 2015 to 2017;

(d) An adequate allocation of financial and human resources to those treaty bodies whose main mandated role is to carry out field visits;

27. *Further decides* that the amount of meeting time allocated will be reviewed biennially on the basis of actual reporting during the previous four years and will be amended on this basis at the request of the Secretary-General in line with established budgetary procedures, and decides that the number of weeks allocated to a committee on a permanent basis prior to the adoption of the present resolution will not be reduced;

28. *Requests* the Secretary-General accordingly to take into account the meeting time needed in relation to the increased capacity of States parties to submit reports under the respective human rights instruments and the situation in terms of ratifications and the number of individual communications considered, based on paragraphs 26 and 27 above, in his future biennial programme budget for the human rights treaty body system, including the specific requirements for field visits by treaty bodies mandated to conduct such visits;

29. *Also requests* the Secretary-General to ensure the progressive implementation of relevant accessibility standards with regard to the human rights treaty body system, as appropriate, particularly in connection with the strategic heritage plan being developed for the United Nations Office at Geneva, and to provide reasonable accommodation for treaty body experts with disabilities to ensure their full and effective participation;

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a Thereafter on the basis of the four preceding years for which data are available and, for treaties for which the data on the incoming reports from the previous four years are not yet available owing to the more recent entry into force, the average will be calculated on the basis of the years for which the data are available.

30. *Decides* to allocate a maximum of three official working languages for the work of the human rights treaty bodies, with the inclusion, on an exceptional basis, of a fourth official language, when necessary to facilitate communication among the members, as determined by the committee concerned, taking into account that these measures will not constitute a precedent, given the special nature of the treaty bodies, and without prejudice to the right of each State party to interact with the treaty bodies in any of the six official languages of the United Nations;

31. *Requests* the Secretary-General to improve the efficiency of the current arrangement with regard to the travel of treaty body experts in line with section VI of resolution 67/254 A of 12 April 2013;

32. *Invites* States parties, as applicable and as an exceptional measure, with a view to achieving greater compliance with reporting obligations by States parties and eliminating the backlog of reports and in agreement with the relevant treaty body, to submit one combined report to satisfy its reporting obligations to the treaty body for the entire period for which reports to that treaty body are outstanding at the time of the adoption of the present resolution;

33. *Invites* the human rights treaty bodies, as an exceptional measure, and with a view to eliminating the current backlog of reports, without prejudice to the existing practices of the human rights treaty bodies or to the right of a State party to provide, or a treaty body to request, a short addendum for the purpose of reflecting significant and relevant recent national developments, to consider all State party reports which at the date of the present resolution have been submitted and are awaiting consideration to satisfy the reporting obligation of the State party concerned to the relevant treaty body until the completion of a reporting cycle starting from the time of the consideration of the report of the State party concerned;

34. *Invites* the human rights treaty bodies and the Office of the High Commissioner, within their respective mandates, to continue to work to increase coordination and predictability in the reporting process, including through cooperation with States parties, with the aim of achieving a clear and regularized schedule for reporting by States parties;

35. *Reaffirms* the importance of the independence and impartiality of members of the human rights treaty bodies, and underlines the importance of all stakeholders of the treaty body system, as well as the Secretariat, respecting fully the independence of treaty body members and the importance of avoiding any act that would interfere with the exercise of their functions;

36. *Notes* the adoption, at the twenty-fourth annual meeting of the Chairs of the human rights treaty bodies, held in Addis Ababa from 25 to 29 June 2012, of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), which are aimed at ensuring objectivity, impartiality and accountability within the treaty body system, in full respect for the independence of the treaty bodies, and in this regard encourages the treaty bodies to implement the guidelines in accordance with their mandates;

37. *Encourages* the human rights treaty bodies to continue to consider and review the Addis Ababa guidelines, inter alia, by seeking the views of States parties and other stakeholders on their development, and in this regard invites the Chairs of the treaty bodies to keep States parties updated on their implementation;

38. *Also encourages* the human rights treaty bodies, with a view to accelerating the harmonization of the treaty body system, to continue to enhance the role of their Chairs in relation to procedural matters, including with respect to formulating conclusions on issues related to working methods and procedural matters, promptly generalizing good practices and methodologies among all treaty bodies, ensuring coherence across the treaty bodies and standardizing working methods;

39. *Further encourages* the human rights treaty bodies to strengthen the possibilities for interaction during the annual meetings of the Chairs of the treaty bodies with States parties to all human rights treaties, held in Geneva and New York, with a view to ensuring a forum for an open and formal interactive dialogue in which all issues, including those related to the independence and impartiality of treaty body members, may be raised by States parties in a constructive manner;

40. *Requests* the Secretary-General to submit to the General Assembly, on a biennial basis, a comprehensive report on the status of the human rights treaty body system and the progress achieved by the human rights treaty bodies in realizing greater efficiency and effectiveness in their work, including the number of reports submitted and reviewed by the committees, the visits undertaken and the individual communications received and reviewed, where applicable, the state of the backlog, capacity-building efforts and the results achieved, as well as the situation in terms of ratifications, increased reporting and the allocation of meeting time and proposals on measures, including on the basis of information and observations from Member States, to enhance the engagement of all States parties in the dialogue with the treaty bodies;

41. *Decides* to consider the state of the human rights treaty body system no later than six years from the date of adoption of the present resolution, to review the effectiveness of the measures taken in order to ensure their sustainability, and, if appropriate, to decide on further action to strengthen and enhance the effective functioning of the human rights treaty body system.

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## Self-determination

### 51. DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

General Assembly resolution 1514 (XV) of 14 December 1960

*The General Assembly,*

*Mindful* of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

*Conscious* of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Recognizing* the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

*Aware* of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

*Considering* the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

*Recognizing* that the peoples of the world ardently desire the end of colonialism in all its manifestations,

*Convinced* that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

*Affirming* that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

*Believing* that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

*Welcoming* the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

*Convinced* that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

*Solemnly proclaims* the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end

*Declares* that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, noninterference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

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## 52. PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

General Assembly resolution 1803 (XVII) of 14 December 1962

*The General Assembly,*

*Recalling* its resolutions 523 (VI) of 12 January 1952 and 626 (VII) of 21 December 1952,

*Bearing in mind* its resolution 1314 (XIII) of 12 December 1958, by which it established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of developing countries,

*Bearing in mind* its resolution 1515 (XV) of 15 December 1960, in which it recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,

*Considering* that any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States,

*Considering* that nothing in paragraph 4 below in any way prejudices the position of any Member State on any aspect of the question of the rights and obligations of successor States and Governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule,

*Noting* that the subject of succession of States and Governments is being examined as a matter of priority by the International Law Commission,

*Considering* that it is desirable to promote international co-operation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination,

*Considering* that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State,

*Considering* the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of such resources and wealth, and the important part which the United Nations and other international organizations are called upon to play in that connexion,

*Attaching* particular importance to the question of promoting the economic development of developing countries and securing their economic independence,

*Noting* that the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence,

*Desiring* that there should be further consideration by the United Nations of the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries,

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*Declares that:*

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.

6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.

8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

## II

*Welcomes* the decision of the International Law Commission to speed up its work on the codification of the topic of responsibility of States for the consideration of the General Assembly;

## III

*Requests* the Secretary-General to continue the study of the various aspects of permanent sovereignty over natural resources, taking into account the desire of Member States to ensure the protection of their sovereign rights while encouraging international co-operation in the field of economic development, and to report to the Economic and Social Council and to the General Assembly, if possible at its eighteenth session.

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## Indigenous peoples

### 53. UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

General Assembly resolution 61/295 of 13 September 2007, annex

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

#### **Article 1**

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

#### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Article 6**

Every indigenous individual has the right to a nationality.

**Article 7**

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

**Article 8**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

**Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

**Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Article 11**

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### **Article 12**

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### **Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### **Article 14**

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### **Article 15**

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### **Article 16**

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### **Article 17**

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

#### **Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### **Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### **Article 21**

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### **Article 22**

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

#### **Article 24**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### **Article 25**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

#### **Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### **Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

**Article 30**

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

**Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

**Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

**Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Article 35**

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

**Article 36**

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

**Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

**Article 38**

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

**Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

**Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

**Article 42**

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

**Article 43**

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

**Article 44**

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

**Article 45**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

**Article 46**

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

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**Development****54. DECLARATION ON THE RIGHT TO DEVELOPMENT**

General Assembly resolution 41/128 of 4 December 1986, annex

*The General Assembly,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Recognizing* that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

*Considering* that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized,

*Recalling* the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights,

*Recalling further* the relevant agreements, conventions, resolutions, recommendations and other instruments of the United Nations and its specialized agencies concerning the integral development of the human being, economic and social progress and development of all peoples, including those instruments concerning decolonization, the prevention of discrimination, respect for and observance of, human rights and fundamental freedoms, the maintenance of international peace and security and the further promotion of friendly relations and co-operation among States in accordance with the Charter,

*Recalling* the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

*Recalling also* the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources,

*Mindful* of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

*Considering* that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, *apartheid*, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind,

*Concerned at* the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, *inter alia*, by the denial of civil, political, economic, social and cultural rights, and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms,

*Considering* that international peace and security are essential elements for the realization of the right to development,

*Reaffirming* that there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries,

*Recognizing* that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development,

*Recognizing* that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States,

*Aware* that efforts at the international level to promote and protect human rights should be accompanied by efforts to establish a new international economic order,

*Confirming* that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations,

*Proclaims* the following Declaration on the Right to Development:

#### **Article 1**

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants

enants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

#### Article 2

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

#### Article 3

1. States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

2. The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.

3. States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

#### Article 4

1. States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

2. Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

#### Article 5

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from *apartheid*, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

#### Article 6

1. All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

2. All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

3. States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights.

#### Article 7

All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.

#### Article 8

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

#### Article 9

1. All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.

2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

#### Article 10

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

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## Religion or belief

### 55. DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

General Assembly resolution 36/55 of 25 November 1981

*The General Assembly,*

*Considering* that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the United Nations to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion or belief,

*Considering* that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

*Considering* that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

*Considering* that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion or belief and to ensure that the use of religion or belief for ends inconsistent with the Charter, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

*Convinced* that freedom of religion or belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

*Noting with satisfaction* the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

*Concerned* by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

*Resolved* to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the grounds of religion or belief,

*Proclaims* this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

#### Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

#### Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or belief.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

#### Article 3

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

#### Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter.

#### Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

#### Article 6

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels.

#### **Article 7**

The rights and freedoms set forth in the present Declaration shall be accorded in national legislations in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

#### **Article 8**

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

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## Business and human rights

### 56. GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS “PROTECT, RESPECT AND REMEDY” FRAMEWORK

Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Mr. John Ruggie, United Nations, Doc. A/HRC/17/31, annex, 21 March 2011

#### General principles

These Guiding Principles are grounded in recognition of:

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.

Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.

These Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.

#### I. THE STATE DUTY TO PROTECT HUMAN RIGHTS

##### A. Foundational principles

**1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.**

##### Commentary

States' international human rights law obligations require that they respect, protect and fulfil the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.

The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication.

States also have the duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency.

This chapter focuses on preventative measures while Chapter III outlines remedial measures.

**2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.**

**Commentary**

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.

States have adopted a range of approaches in this regard. Some are domestic measures with extraterritorial implications. Examples include requirements on "parent" companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement.

**B. Operational principles**

**General State regulatory and policy functions**

**3. In meeting their duty to protect, States should:**

- (a) **Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;**
- (b) **Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;**
- (c) **Provide effective guidance to business enterprises on how to respect human rights throughout their operations;**
- (d) **Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.**

**Commentary**

States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.

The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labour laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation.

It is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises.

Laws and policies that govern the creation and ongoing operation of business enterprises, such as corporate and securities laws, directly shape business behaviour. Yet their implications for human rights remain poorly understood. For example, there is a lack of clarity in corporate and securities law regarding what companies and their officers are permitted, let alone required, to do regarding human rights. Laws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards.

Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.

National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.

Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. State encouragement of, or where appropriate requirements for, such communication are important in fostering respect for human rights by business enterprises. Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications.

Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures.

Financial reporting requirements should clarify that human rights impacts in some instances may be "material" or "significant" to the economic performance of the business enterprise.

#### **The State-business nexus**

**4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.**

#### **Commentary**

States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights.

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in Chapter II.)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.

**5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.**

#### Commentary

States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.

**6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.**

#### Commentary

States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States' relevant obligations under national and international law.

#### Supporting business respect for human rights in conflict-affected areas

**7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:**

(a) **Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;**

(b) **Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;**

(c) **Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;**

(d) **Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.**

### Commentary

Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended. Responsible businesses increasingly seek guidance from States about how to avoid contributing to human rights harm in these difficult contexts. Innovative and practical approaches are needed. In particular, it is important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict.

It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the “host” State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their “home” States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighboring States can provide important additional support.

To achieve greater policy coherence and assist business enterprises adequately in such situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert Government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision.

States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas. They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business. Where they identify gaps, States should take appropriate steps to address them. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses. Moreover, States should consider multilateral approaches to prevent and address such acts, as well as support effective collective initiatives.

All these measures are in addition to States’ obligations under international humanitarian law in situations of armed conflict, and under international criminal law.

### Ensuring policy coherence

**8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.**

### Commentary

There is no inevitable tension between States’ human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.

Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means

supporting and equipping departments and agencies, at both the national and sub-national levels, that shape business practices – including those responsible for corporate law and securities regulation, investment, export credit and insurance, trade and labour – to be informed of and act in a manner compatible with the Governments’ human rights obligations.

**9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.**

#### Commentary

Economic agreements concluded by States, either with other States or with business enterprises – such as bilateral investment treaties, free-trade agreements or contracts for investment projects – create economic opportunities for States. But they can also affect the domestic policy space of governments. For example, the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements, while providing the necessary investor protection.

**10. States, when acting as members of multilateral institutions that deal with business-related issues, should:**

**(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;**

**(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;**

**(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.**

#### Commentary

Greater policy coherence is also needed at the international level, including where States participate in multilateral institutions that deal with business-related issues, such as international trade and financial institutions. States retain their international human rights law obligations when they participate in such institutions.

Capacity-building and awareness-raising through such institutions can play a vital role in helping all States to fulfil their duty to protect, including by enabling the sharing of information about challenges and best practices, thus promoting more consistent approaches.

Collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights, but it should do so by raising the performance of laggards. Cooperation between States, multilateral institutions and other stakeholders can also play an important role.

These Guiding Principles provide a common reference point in this regard, and could serve as a useful basis for building a cumulative positive effect that takes into account the respective roles and responsibilities of all relevant stakeholders.

## II. THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

### A. Foundational principles

**11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.**

#### Commentary

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.

Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.

**12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.**

#### Commentary

Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review.

An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.

**13. The responsibility to respect human rights requires that business enterprises:**

**(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;**

**(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.**

#### Commentary

Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. Guiding Principle 19 elaborates further on the implications for how business enterprises should address these situations. For the purpose of these Guiding Principles a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

**14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.**

#### Commentary

The means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size. Severity of impacts will be judged by their scale, scope and irremediable character. The means through which a business enterprise meets its responsibility to respect human rights may also vary depending on whether, and the extent to which, it conducts business through a corporate group or individually. However, the responsibility to respect human rights applies fully and equally to all business enterprises.

**15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:**

- (a) A policy commitment to meet their responsibility to respect human rights;**
- (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;**
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.**

#### Commentary

Business enterprises need to know and show that they respect human rights. They cannot do so unless they have certain policies and processes in place. Principles 16 to 24 elaborate further on these.

### B. Operational principles

#### Policy commitment

**16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:**

- (a) Is approved at the most senior level of the business enterprise;**
- (b) Is informed by relevant internal and/or external expertise;**

- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;**
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;**
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.**

### Commentary

The term “statement” is used generically, to describe whatever means an enterprise employs to set out publicly its responsibilities, commitments, and expectations.

The level of expertise required to ensure that the policy statement is adequately informed will vary according to the complexity of the business enterprise's operations. Expertise can be drawn from various sources, ranging from credible online or written resources to consultation with recognized experts.

The statement of commitment should be publicly available. It should be communicated actively to entities with which the enterprise has contractual relationships; others directly linked to its operations, which may include State security forces; investors; and, in the case of operations with significant human rights risks, to the potentially affected stakeholders.

Internal communication of the statement and of related policies and procedures should make clear what the lines and systems of accountability will be, and should be supported by any necessary training for personnel in relevant business functions.

Just as States should work towards policy coherence, so business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. This should include, for example, policies and procedures that set financial and other performance incentives for personnel; procurement practices; and lobbying activities where human rights are at stake.

Through these and any other appropriate means, the policy statement should be embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights.

### Human rights due diligence

**17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:**

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;**
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;**
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.**

### Commentary

This Principle defines the parameters for human rights due diligence, while Principles 18 through 21 elaborate its essential components.

Human rights risks are understood to be the business enterprise's potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22).

Human rights due diligence can be included within broader enterprise risk-management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.

Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.

Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a non-legal matter, business enterprises may be perceived as being "complicit" in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise's alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.

Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.

**18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:**

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

#### Commentary

The initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. In this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.

While processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.

Because human rights situations are dynamic, assessments of human rights impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.

To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.

The assessment of human rights impacts informs subsequent steps in the human rights due diligence process.

**19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.**

- (a) **Effective integration requires that:**
  - (i) **Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;**
  - (ii) **Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.**
- (b) **Appropriate action will vary according to:**
  - (i) **Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;**
  - (ii) **The extent of its leverage in addressing the adverse impact.**

#### **Commentary**

The horizontal integration across the business enterprise of specific findings from assessing human rights impacts can only be effective if its human rights policy commitment has been embedded into all relevant business functions. This is required to ensure that the assessment findings are properly understood, given due weight, and acted upon.

In assessing human rights impacts, business enterprises will have looked for both actual and potential adverse impacts. Potential impacts should be prevented or mitigated through the horizontal integration of findings across the business enterprise, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22).

Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.

Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the

determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.

The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.

If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.

There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.

Where the relationship is "crucial" to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.

**20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:**

- (a) **Be based on appropriate qualitative and quantitative indicators;**
- (b) **Draw on feedback from both internal and external sources, including affected stakeholders.**

#### **Commentary**

Tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement.

Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.

Tracking should be integrated into relevant internal reporting processes. Business enterprises might employ tools they already use in relation to other issues. This could include performance contracts and reviews as well as surveys and audits, using gender-disaggregated data where relevant. Operational-level grievance mechanisms can also provide important feedback on the effectiveness of the business enterprise's human rights due diligence from those directly affected (see Principle 29).

**21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:**

- (a) **Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;**
- (b) **Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;**

**(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.**

#### **Commentary**

The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.

Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include on-line updates and integrated financial and non-financial reports.

Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.

#### **Remediation**

**22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.**

#### **Commentary**

Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.

Where a business enterprise identifies such a situation, whether through its human rights due diligence process or other means, its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors. Operational-level grievance mechanisms for those potentially impacted by the business enterprise's activities can be one effective means of enabling remediation when they meet certain core criteria, as set out in Principle 31.

Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.

Some situations, in particular where crimes are alleged, typically will require cooperation with judicial mechanisms.

Further guidance on mechanisms through which remediation may be sought, including where allegations of adverse human rights impacts are contested, is included in Chapter III on access to remedy.

#### **Issues of context**

**23. In all contexts, business enterprises should:**

**(a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;**

**(b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;**

**(c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.**

### Commentary

Although particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate. Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.

Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses.

In complex contexts such as these, business enterprises should ensure that they do not exacerbate the situation. In assessing how best to respond, they will often be well advised to draw on not only expertise and cross-functional consultation within the enterprise, but also to consult externally with credible, independent experts, including from governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives.

**24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.**

### Commentary

While business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect remediability. Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified.

## III. ACCESS TO REMEDY

### A. Foundational principle

**25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.**

### Commentary

Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.

Access to effective remedy has both procedural and substantive aspects. The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.

State-based grievance mechanisms may be administered by a branch or agency of the State, or by an independent body on a statutory or constitutional basis. They may be judicial or non-judicial. In some mechanisms, those affected are directly involved in seeking remedy; in others, an intermediary seeks remedy on their behalf. Examples include the courts (for both criminal and civil actions), labour tribunals, National Human Rights Institutions, National Contact Points under the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development, many ombudsperson offices, and Government-run complaints offices.

Ensuring access to remedy for business-related human rights abuses requires also that States facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support (financial or expert) for doing so.

State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early-stage recourse and resolution. State-based and operational-level mechanisms, in turn, can be supplemented or enhanced by the remedial functions of collaborative initiatives as well as those of international and regional human rights mechanisms. Further guidance with regard to these mechanisms is provided in Guiding Principles 26 to 31.

## **B. Operational principles**

### **State-based judicial mechanisms**

**26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.**

#### **Commentary**

Effective judicial mechanisms are at the core of ensuring access to remedy. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process.

States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable. They should also ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed.

Legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example:

- The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability;
- Where claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim;
- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.

Practical and procedural barriers to accessing judicial remedy can arise where, for example:

- The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through government support, 'market-based' mechanisms (such as litigation insurance and legal fee structures), or other means;
- Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;
- There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants;
- State prosecutors lack adequate resources, expertise and support to meet the State's own obligations to investigate individual and business involvement in human rights-related crimes.

Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights claims, such as in their financial resources, access to information and expertise. Moreover, whether through active discrimination or as the unintended consequences of the way judicial mechanisms are designed and operate, individuals from groups or populations at heightened risk of vulnerability or marginalization often face additional cultural, social, physical and financial impediments to accessing, using and benefiting from these mechanisms. Particular attention should be given to the rights and specific needs of such groups or populations at each stage of the remedial process: access, procedures and outcome.

#### **State-based non-judicial grievance mechanisms**

**27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.**

#### **Commentary**

Administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favoured approach for all claimants.

Gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms. These may be mediation-based, adjudicative or follow other culturally-appropriate and rights-compatible processes – or involve some combination of these – depending on the issues concerned, any public interest involved, and the potential needs of the parties. To ensure their effectiveness, they should meet the criteria set out in Principle 31.

National human rights institutions have a particularly important role to play in this regard.

As with judicial mechanisms, States should consider ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalization.

#### **Non-State-based grievance mechanisms**

**28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.**

#### **Commentary**

One category of non-State-based grievance mechanisms encompasses those administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropri-

ate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

Another category comprises regional and international human rights bodies. These have dealt most often with alleged violations by States of their obligations to respect human rights. However, some have also dealt with the failure of a State to meet its duty to protect against human rights abuse by business enterprises.

States can play a helpful role in raising awareness of, or otherwise facilitating access to, such options, alongside the mechanisms provided by States themselves.

**29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.**

#### Commentary

Operational-level grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They may also be provided through recourse to a mutually acceptable external expert or body. They do not require that those bringing a complaint first access other means of recourse. They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm.

Operational-level grievance mechanisms perform two key functions regarding the responsibility of business enterprises to respect human rights.

- First, they support the identification of adverse human rights impacts as a part of an enterprise's on-going human rights due diligence. They do so by providing a channel for those directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely impacted. By analyzing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly
- Second, these mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.

Such mechanisms need not require that a complaint or grievance amount to an alleged human rights abuse before it can be raised, but specifically aim to identify any legitimate concerns of those who may be adversely impacted. If those concerns are not identified and addressed, they may over time escalate into more major disputes and human rights abuses.

Operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice (Principle 31). These criteria can be met through many different forms of grievance mechanism according to the demands of scale, resource, sector, culture and other parameters.

Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.

**30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.**

#### Commentary

Human rights-related standards are increasingly reflected in commitments undertaken by industry bodies, multi-stakeholder and other collaborative initiatives, through codes of conduct, performance standards, global framework agreements between trade unions and transnational corporations, and similar undertakings.

Such collaborative initiatives should ensure the availability of effective mechanisms through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met. The legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms. The mechanisms could be at the level of individual members, of the collaborative initiative, or both. These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts.

### **Effectiveness criteria for non-judicial grievance mechanisms**

**31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:**

(a) **Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;**

(b) **Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;**

(c) **Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;**

(d) **Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;**

(e) **Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;**

(f) **Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;**

(g) **A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;**

**Operational-level mechanisms should also be:**

(h) **Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.**

### **Commentary**

A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. These criteria provide a benchmark for designing, revising or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.

The first seven criteria apply to any State-based or non-State-based, adjudicative or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that business enterprises help administer.

The term "grievance mechanism" is used here as a term of art. The term itself may not always be appropriate or helpful when applied to a specific mechanism, but the criteria for effectiveness remain the same. Commentary on the specific criteria follows:

(a) Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust;

(b) Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;

(c) In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Timeframes for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;

(d) In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;

(e) Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism's performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals' identities should be provided where necessary;

(f) Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;

(g) Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm;

(h) For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

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## Right to a remedy and reparation

### 57. BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

General Assembly resolution 60/147 of 16 December 2005, annex

#### Preamble

*The General Assembly,*

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court,

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular article 7 of the African Charter on Human and Peoples' Rights, article 25 of the American Convention on Human Rights, and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

*Recalling* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

*Reaffirming* the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

*Noting* that the Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation", requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate" by the Court",

*Affirming* that the Basic Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

*Emphasizing* that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

*Recalling* that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

*Noting* that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

*Convinced* that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

*Adopts* the following Basic Principles and Guidelines:

### **I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law**

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:

- (a) Treaties to which a State is a party;

- (b) Customary international law;
- (c) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

- (a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
- (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
- (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;
- (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

## II. Scope of the obligation

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, *inter alia*, the duty to:

- (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and
- (d) Provide effective remedies to victims, including reparation, as described below.

## III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

## IV. Statutes of limitations

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights

law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

#### **V. Victims of gross violations of international human rights law and serious violations of international humanitarian law**

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

#### **VI. Treatment of victims**

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

#### **VII. Victims' right to remedies**

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

#### **VIII. Access to justice**

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

(a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;

(b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(c) Provide proper assistance to victims seeking access to justice;

(d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

### IX. Reparation for harm suffered

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

#### **X. Access to relevant information concerning violations and reparation mechanisms**

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

**XI. Non-discrimination**

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

**XII. Non-derogation**

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

**XIII. Rights of others**

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

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## **Chapter IX**

### **MOVEMENT OF PERSONS AND INTERNATIONAL MIGRATION LAW**



## Refugees

### 58. STATUTE OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

General Assembly resolution 428 (V) of 14 December 1950, annex

#### CHAPTER I. GENERAL PROVISIONS

1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of the advisory committee on refugees if it is created.

2. The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.

3. The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council.

4. The Economic and Social Council may decide, after hearing the views of the High Commissioner on the subject, to establish an advisory committee on refugees, which shall consist of representatives of States Members and States non-members of the United Nations, to be selected by the Council on the basis of their demonstrated interest in and devotion to the solution of the refugee problem.

5. The General Assembly shall review, not later than at its eighth regular session, the arrangements for the Office of the High Commissioner with a view to determining whether the Office should be continued beyond 31 December 1953.

#### CHAPTER II. FUNCTIONS OF THE HIGH COMMISSIONER

6. The competence of the High Commissioner shall extend to:

A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.

(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph;

The competence of the High Commissioner shall cease to apply to any person defined in section A above if:

- (a) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (b) Having lost his nationality, he has voluntarily re-acquired it; or

(c) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(d) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(e) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or

(f) Being a person who has no nationality, he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country;

B. Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

7. Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person:

(a) Who is a national of more than one country unless he satisfies the provisions of the preceding paragraph in relation to each of the countries of which he is a national; or

(b) Who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or

(c) Who continues to receive from other organs or agencies of the United Nations protection or assistance; or

(d) In respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition or a crime mentioned in article VI of the London Charter of the International Military Tribunal or by the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights.

8. The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by:

(a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

(b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;

(d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;

(e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;

(f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;

(g) Keeping in close touch with the Governments and inter-governmental organizations concerned;

(h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;

(i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.

10. The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance.

The High Commissioner may reject any offers which he does not consider appropriate or which cannot be utilized.

The High Commissioner shall not appeal to Governments for funds or make a general appeal, without the prior approval of the General Assembly.

The High Commissioner shall include in his annual report a statement of his activities in this field.

11. The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies.

The High Commissioner shall report annually to the General Assembly through the Economic and Social Council; his report shall be considered as a separate item on the agenda of the General Assembly.

12. The High Commissioner may invite the co-operation of the various specialized agencies.

### **CHAPTER III. ORGANIZATION AND FINANCES**

13. The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General. The terms of appointment of the High Commissioner shall be proposed by the Secretary-General and approved by the General Assembly. The High Commissioner shall be elected for a term of three years, from 1 January 1951.

14. The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own.

15. (a) Within the limits of the budgetary appropriations provided, the staff of the Office of the High Commissioner shall be appointed by the High Commissioner and shall be responsible to him in the exercise of their functions.

(b) Such staff shall be chosen from persons devoted to the purposes of the Office of the High Commissioner.

(c) Their conditions of employment shall be those provided under the staff regulations adopted by the General Assembly and the rules promulgated thereunder by the Secretary-General.

(d) Provision may also be made to permit the employment of personnel without compensation.

16. The High Commissioner shall consult the Government of the countries of residence of refugees as to the need for appointing representatives therein. In any country recognizing such need, there may be appointed a representative approved by the Government of that country. Subject to the foregoing, the same representative may serve in more than one country.

17. The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest.

18. The Secretary-General shall provide the High Commissioner with all necessary facilities within budgetary limitations.

19. The Office of the High Commissioner shall be located in Geneva, Switzerland.

20. The Office of the High Commissioner shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure other than administrative expenditures relating to the functioning of the Office of the High Commis-

sioner shall be borne on the budget of the United Nations and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions.

21. The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the financial rules promulgated thereunder by the Secretary-General.

22. Transactions relating to the High Commissioner's funds shall be subject to audit by the United Nations Board of Auditors, provided that the Board may accept audited accounts from the agencies to which funds have been allocated. Administrative arrangements for the custody of such funds and their allocation shall be agreed between the High Commissioner and the Secretary-General in accordance with the Financial Regulations of the United Nations and rules promulgated thereunder by the Secretary-General.

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## 59. CONVENTION RELATING TO THE STATUS OF REFUGEES

Done at Geneva on 28 July 1951

Entry into force: 22 April 1954

United Nations, *Treaty Series*, vol. 189, p. 137; Reg. No. 2545

### Preamble

*The High Contracting Parties,*

*Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

*Considering* that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

*Considering* that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement,

*Considering* that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

*Expressing* the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

*Noting* that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

*Have agreed* as follows:

### CHAPTER I. GENERAL PROVISIONS

#### Article 1. Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either:

(a) "events occurring in Europe before 1 January 1951"; or

(b) "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

#### **Article 2. General obligations**

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

#### **Article 3. Non-discrimination**

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

#### **Article 4. Religion**

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

#### **Article 5. Rights granted apart from this Convention**

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

#### **Article 6. The term "in the same circumstances"**

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

#### **Article 7. Exemption from reciprocity**

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

#### **Article 8. Exemption from exceptional measures**

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

#### **Article 9. Provisional measures**

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

#### **Article 10. Continuity of residence**

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

#### **Article 11. Refugee seamen**

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

### **CHAPTER II. JURIDICAL STATUS**

#### **Article 12. Personal status**

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

**Article 13. Movable and immovable property**

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

**Article 14. Artistic rights and industrial property**

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic, and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

**Article 15. Right of association**

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

**Article 16. Access to courts**

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

**CHAPTER III. Gainful Employment****Article 17. Wage-earning employment**

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
  - (a) He has completed three years' residence in the country;
  - (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;
  - (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

**Article 18. Self-employment**

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

**Article 19. Liberal professions**

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

**CHAPTER IV. WELFARE****Article 20. Rationing**

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

**Article 21. Housing**

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

**Article 22. Public education**

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

**Article 23. Public relief**

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

**Article 24. Labour legislation and social security**

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

- (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
- (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

## **CHAPTER V. ADMINISTRATIVE MEASURES**

### **Article 25. Administrative assistance**

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

### **Article 26. Freedom of movement**

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

### **Article 27. Identity papers**

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

**Article 28. Travel documents**

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

**Article 29. Fiscal charges**

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

**Article 30. Transfer of assets**

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

**Article 31. Refugees unlawfully in the country of refuge**

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

**Article 32. Expulsion**

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

#### **Article 33. Prohibition of expulsion or return (“refoulement”)**

1. No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

#### **Article 34. Naturalization**

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

### **CHAPTER VI. EXECUTORY AND TRANSITORY PROVISIONS**

#### **Article 35. Co-operation of the national authorities with the United Nations**

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

- (a) The condition of refugees,
- (b) The implementation of this Convention, and;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

#### **Article 36. Information on national legislation**

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

#### **Article 37. Relation to previous conventions**

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

### **CHAPTER VII. FINAL CLAUSES**

#### **Article 38. Settlement of disputes**

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

**Article 39. Signature, ratification and accession**

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 40. Territorial application clause**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

**Article 41. Federal clause**

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

**Article 42. Reservations**

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

**Article 43. Entry into force**

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

**Article 44. Denunciation**

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

**Article 45. Revision**

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

**Article 46. Notifications by the Secretary-General of the United Nations**

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) Of declarations and notifications in accordance with section B of article 1;
- (b) Of signatures, ratifications and accessions in accordance with article 39;
- (c) Of declarations and notifications in accordance with article 40;
- (d) Of reservations and withdrawals in accordance with article 42;
- (e) Of the date on which this Convention will come into force in accordance with article 43;
- (f) Of denunciations and notifications in accordance with article 44;
- (g) Of requests for revision in accordance with article 45.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments,

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

**SCHEDULE****Paragraph 1**

1. The travel document referred to in article 28 of this Convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages, one of which shall be English or French.

**Paragraph 2**

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult refugee.

**Paragraph 3**

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

**Paragraph 4**

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

**Paragraph 5**

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

**Paragraph 6**

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

**Paragraph 7**

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

**Paragraph 8**

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

**Paragraph 9**

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

**Paragraph 10**

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

**Paragraph 11**

When a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

**Paragraph 12**

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

**Paragraph 13**

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with article 28 of this Convention shall be readmitted to its territory at any time during the period of its validity.

2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

**Paragraph 14**

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

**Paragraph 15**

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

**Paragraph 16**

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

## ANNEX

## Specimen Travel Document

The document will be in booklet form (approximately 15 x 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words "Convention of 28 July 1951" be printed in continuous repetition on each page, in the language of the issuing country.

*(Cover of booklet)*

TRAVEL DOCUMENT  
(Convention of 28 July 1951)

No. ....

(1)

TRAVEL DOCUMENT  
(Convention of 28 July 1951)

This document expires on ..... unless its validity is extended or renewed.

Name .....

Forename(s) .....

Accompanied by ..... child (children).

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to ..... [state here the country whose authorities are issuing the document] on or before ..... unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months.]

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.]<sup>1</sup>

<sup>1</sup> The sentence in brackets to be inserted by Governments which so desire.

(This document contains . . . pages, exclusive of cover.)

(2)

Place and date of birth . . . . .  
 Occupation . . . . .  
 Present residence . . . . .  
 \*Maiden name and forename(s) of wife . . . . .  
 \*Name and forename(s) of husband . . . . .

*Description*

Height . . . . .  
 Hair . . . . .  
 Colour of eyes . . . . .  
 Nose . . . . .  
 Shape of face . . . . .  
 Complexion . . . . .  
 Special peculiarities . . . . .

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

\*Strike out whichever does not apply  
 (This document contains . . . pages, exclusive of cover.)

(3)

Photograph of holder and stamp of issuing authority  
 Finger-prints of holder (if required)

Signature of holder . . . . .  
 (This document contains . . . pages, exclusive of cover.)

(4)

1. This document is valid for the following countries:  
 .....  
 .....

2. Document or documents on the basis of which the present document is issued:  
 .....  
 .....

Issued at . . . . .  
 Date . . . . .

Signature and stamp of authority  
 issuing the document:

Fee paid:  
 (This document contains . . . pages, exclusive of cover.)

(5)

Extension or renewal of validity

Fee paid: From.....  
To.....  
Date.....

Done at..... Signature and stamp of authority  
extending or renewing the validity of  
the document:

Extension or renewal of validity

Fee paid: From.....  
To.....  
Date.....

Done at..... Signature and stamp of authority  
extending or renewing the validity of  
the document:

(This document contains . . . pages, exclusive of cover.)

(6)

Extension or renewal of validity

Fee paid: From.....  
To.....  
Date.....

Done at..... Signature and stamp of authority  
extending or renewing the validity of  
the document:

Extension or renewal of validity

Fee paid: From.....  
To.....  
Date.....

Done at..... Signature and stamp of authority  
extending or renewing the validity of  
the document:

(This document contains . . . pages, exclusive of cover.)

(7-32)

Visas

The name of the holder of the document must be repeated in each visa.

(This document contains . . . pages, exclusive of cover.)



## 59.(a) PROTOCOL RELATING TO THE STATUS OF REFUGEES

Done at New York on 11 January 1967

Entry into force: 4 October 1967

United Nations, *Treaty Series*, vol. 606, p. 267; Reg. No. 8791

*The States Parties to the present Protocol,*

*Considering* that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

*Considering* that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

*Considering* that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

*Have agreed* as follows:

### Article I. General provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and . . .” and the words “. . . as a result of such events”, in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

### Article II. Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

### Article III. Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

#### Article IV. Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

#### Article V. Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### Article VI. Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

#### Article VII. Reservations and declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

**Article VIII. Entry into force**

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

**Article IX. Denunciation**

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

**Article X. Notifications by the Secretary-General of the United Nations**

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

**Article XI. Deposit in the Archives of the Secretariat of the United Nations**

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

**60. DECLARATION ON TERRITORIAL ASYLUM**

General Assembly resolution 2312 (XXII) of 14 December 1967

*The General Assembly,*

*Recalling* its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

*Considering* the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

*Adopts* the following Declaration:

*The General Assembly,*

*Noting* that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

*Mindful* of the Universal Declaration of Human Rights, which declares in article 14 that:

“1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

“2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations”,

Recalling also article 13, paragraph 2, of the Universal Declaration of Human Rights, which states:

“Everyone has the right to leave any country, including his own, and to return to his country”,

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State,

Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:

#### Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

#### Article 2

1. The situation of persons referred to in article 1, paragraph 1, is without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

#### Article 3

1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

#### Article 4

States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

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## Statelessness

### 61. CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS

Done at New York on 28 September 1954

Entry into force: 6 June 1960

United Nations, *Treaty Series*, vol. 360, p.117; Reg. No. 5158

#### Preamble

*The High Contracting Parties,*

*Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

*Considering* that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

*Considering* that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention,

*Considering* that it is desirable to regulate and improve the status of stateless persons by an international agreement,

*Have agreed* as follows:

#### CHAPTER I. GENERAL PROVISIONS

##### Article 1. Definition of the term "stateless person"

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

2. This Convention shall not apply:

- (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;
- (ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
- (iii) To persons with respect to whom there are serious reasons for considering that:
  - (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
  - (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
  - (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

##### Article 2. General obligations

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

### **Article 3. Non-discrimination**

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

### **Article 4. Religion**

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

### **Article 5. Rights granted apart from this Convention**

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

### **Article 6. The term “in the same circumstances”**

For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

### **Article 7. Exemption from reciprocity**

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

### **Article 8. Exemption from exceptional measures**

With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

### **Article 9. Provisional measures**

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contract-

ing State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

#### **Article 10. Continuity of residence**

1. Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

#### **Article 11. Stateless seamen**

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

### **CHAPTER II. JURIDICAL STATUS**

#### **Article 12. Personal status**

1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

#### **Article 13. Movable and immovable property**

The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

#### **Article 14. Artistic rights and industrial property**

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

#### **Article 15. Right of association**

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

**Article 16. Access to Courts**

1. A stateless person shall have free access to the Courts of Law on the territory of all Contracting States.

2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

**CHAPTER III. GAINFUL EMPLOYMENT****Article 17. Wage-earning employment**

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.

2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

**Article 18. Self-employment**

The Contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

**Article 19. Liberal professions**

Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

**CHAPTER IV. WELFARE****Article 20. Rationing**

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

**Article 21. Housing**

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

**Article 22. Public education**

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

#### **Article 23. Public relief**

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

#### **Article 24. Labour legislation and social security**

1. The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment, injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

- (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
- (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

### **CHAPTER V. ADMINISTRATIVE MEASURES**

#### **Article 25. Administrative assistance**

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

#### **Article 26. Freedom of movement**

Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

#### **Article 27. Identity papers**

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

#### **Article 28. Travel documents**

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

#### **Article 29. Fiscal charges**

1. The Contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

#### **Article 30. Transfer of assets**

1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

#### **Article 31. Expulsion**

1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to

and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

#### **Article 32. Naturalization**

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

### **CHAPTER VI. FINAL CLAUSES**

#### **Article 33. Information on national legislation**

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

#### **Article 34. Settlement of disputes**

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

#### **Article 35. Signature, ratification and accession**

1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.

2. It shall be open for signature on behalf of:

- (a) Any State Member of the United Nations;
- (b) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and
- (c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 36. Territorial application clause**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

**Article 37. Federal clause**

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

**Article 38. Reservations**

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

**Article 39. Entry into force**

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

**Article 40. Denunciation**

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

**Article 41. Revision**

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

**Article 42. Notifications by the Secretary-General of the United Nations**

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-Member States referred to in article 35:

- (a) Of signatures, ratifications and accessions in accordance with article 35;
- (b) Of declarations and notifications in accordance with article 36;
- (c) Of reservations and withdrawals in accordance with article 38;
- (d) Of the date on which this Convention will come into force in accordance with article 39;
- (e) Of denunciations and notifications in accordance with article 40;
- (f) Of requests for revision in accordance with article 41.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at New York, this twenty-eighth day of September, one thousand nine hundred and fifty-four, in a single copy, of which the English, French and Spanish texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-Member States referred to in article 35.

## **SCHEDULE**

### **Paragraph 1**

1. The travel document referred to in article 28 of this Convention shall indicate that the holder is a stateless person under the terms of the Convention of 28 September 1954.

2. The document shall be made out in at least two languages, one of which shall be English or French.

3. The Contracting States will consider the desirability of adopting the model travel document attached hereto.

### **Paragraph 2**

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult.

### **Paragraph 3**

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

### **Paragraph 4**

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

### **Paragraph 5**

The document shall have a validity of not less than three months and not more than two years.

### **Paragraph 6**

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities may be authorized to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to stateless persons no longer lawfully resi-

dent in their territory who are unable to obtain a travel document from the country of their lawful residence.

#### **Paragraph 7**

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

#### **Paragraph 8**

The competent authorities of the country to which the stateless person desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

#### **Paragraph 9**

1. The Contracting States undertake to issue transit visas to stateless persons who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

#### **Paragraph 10**

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

#### **Paragraph 11**

When a stateless person has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28 shall be that of the competent authority of that territory, to which the stateless person shall be entitled to apply.

#### **Paragraph 12**

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

#### **Paragraph 13**

1. A travel document issued in accordance with article 28 of this Convention shall, unless it contains a statement to the contrary, entitle the holder to re-enter the territory of the issuing State at any time during the period of its validity. In any case the period during which the holder may return to the country issuing the document shall not be less than three months, except when the country to which the stateless person proposes to travel does not insist on the travel document according to the right of re-entry.

2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

#### **Paragraph 14**

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

**Paragraph 15**

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

**Paragraph 16**

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not ipso facto confer on these authorities a right of protection.

**MODEL TRAVEL DOCUMENT**

It is recommended that the document be in booklet form (approximately 15 x 10 centimetres), that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words "Convention of 28 September 1954" be printed in continuous repetition on each page, in the language of the issuing country.

*(Cover of booklet)*

TRAVEL DOCUMENT

(Convention of 28 September 1954)

No. ....

(1)

TRAVEL DOCUMENT

(Convention of 28 September 1954)

This document expires on ..... unless its validity is extended or renewed.

Name .....

Forename(s) .....

Accompanied by ..... child (children).

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to ..... [state here the country whose authorities are issuing the document] on or before ..... unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months except when the country to which the holder proposes to travel does not insist on the travel document according the right of re-entry.]

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.]<sup>1</sup>

<sup>1</sup>The sentence in brackets to be inserted by Governments which so desire.

(This document contains 32 pages, exclusive of cover.)

(2)

Place and date of birth .....

Occupation .....

Present residence .....

\*Maiden name and forename(s) of wife .....

\*Name and forename(s) of husband .....

*Description*

Height .....

Hair .....

Colour of eyes .....

Nose .....

Shape of face .....

Complexion .....

Special peculiarities .....

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

\*Strike out whichever does not apply

(This document contains 32 pages, exclusive of cover.)

(3)

Photograph of holder and stamp of issuing authority

Finger-prints of holder (if required)

Signature of holder .....

(This document contains 32 pages, exclusive of cover.)

(4)

1. This document is valid for the following countries:

.....

.....

.....

2. Document or documents on the basis of which the present document is issued:

.....

.....

.....

Issued at .....

Date .....

Signature and stamp of authority  
issuing the document:

Fee paid:

(This document contains 32 pages, exclusive of cover.)

(5)

Extension or renewal of validity

Fee paid: From.....  
 To.....  
 Date.....

Done at..... Signature and stamp of authority  
 extending or renewing the validity of  
 the document:

Extension or renewal of validity

Fee paid: From.....  
 To.....  
 Date.....

Done at..... Signature and stamp of authority  
 extending or renewing the validity of  
 the document:

(This document contains 32 pages, exclusive of cover.)

(6)

Extension or renewal of validity

Fee paid: From.....  
 To.....  
 Date.....

Done at..... Signature and stamp of authority  
 extending or renewing the validity of  
 the document:

Extension or renewal of validity

Fee paid: From.....  
 To.....  
 Date.....

Done at..... Signature and stamp of authority  
 extending or renewing the validity of  
 the document:

(This document contains 32 pages, exclusive of cover.)

(7-32)

Visas

The name of the holder of the document must be repeated in each visa.

(This document contains 32 pages, exclusive of cover.)



## 62. CONVENTION ON THE REDUCTION OF STATELESSNESS

Done at New York on 30 August 1961

Entry into force: 13 December 1975.

United Nations, *Treaty Series*, vol. 989, p. 175; Reg. No. 14458

*The Contracting States,*

Acting in pursuance of resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954,

Considering it desirable to reduce statelessness by international agreement,

Have agreed as follows:

### Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) that the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he had passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused.

5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(c) that the person concerned has always been stateless.

#### **Article 2**

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

#### **Article 3**

For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

#### **Article 4**

1. A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

2. A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(c) that the person concerned has not been convicted of an offence against national security;

(d) that the person concerned has always been stateless.

#### **Article 5**

1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2. If, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of article 1 of this Convention.

### Article 6

If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

### Article 7

1. (a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

(b) The provisions of subparagraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2. A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.

### Article 8

1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud.

3. Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

#### **Article 9**

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

#### **Article 10**

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

#### **Article 11**

The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

#### **Article 12**

1. In relation to a Contracting State which does not, in accordance with the provisions of paragraph 1 of article 1 or of article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph 1 of article 1 or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

2. The provisions of paragraph 4 of article 1 of this Convention shall apply to persons born before as well as to persons born after its entry into force.

3. The provisions of article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

#### **Article 13**

This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.

#### **Article 14**

Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

### Article 15

1. This Convention shall apply in all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply *ipso facto* as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary-General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of this article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

### Article 16

1. This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2. This Convention shall be open for signature on behalf of:

- (a) any State Member of the United Nations;
- (b) any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;
- (c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. This Convention shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### Article 17

1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.

2. No other reservations to this Convention shall be admissible.

### Article 18

1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this article, whichever is the later.

**Article 19**

1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary-General.

2. In cases where, in accordance with the provisions of article 15, this Convention has become applicable to a non-metropolitan territory of a Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date of receipt thereof.

**Article 20**

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 16 of the following particulars:

- (a) signatures, ratifications and accessions under article 16;
- (b) reservations under article 17;
- (c) the date upon which this Convention enters into force in pursuance of article 18;
- (d) denunciations under article 19.

2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with article 11, of such a body as therein mentioned.

**Article 21**

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

In witness whereof the undersigned Plenipotentiaries have signed this Convention.

Done at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and certified copies of which shall be delivered by the Secretary-General of the United Nations to all Members of the United Nations and to the non-member States referred to in article 16 of this Convention.

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## Internally displaced persons

### 63. GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission [on Human Rights] resolution 1997/39, Addendum; United Nations Doc. E/CN.4/1998/53/Add.2, 11 February 1998

#### INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

- (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
- (b) States when faced with the phenomenon of internal displacement;
- (c) All other authorities, groups and persons in their relations with internally displaced persons; and
- (d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

#### SECTION I - GENERAL PRINCIPLES

##### Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

##### Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

**Principle 3**

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

**Principle 4**

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

**SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT****Principle 5**

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

**Principle 6**

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

(a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

(b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

(c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and

(e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

**Principle 7**

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

(a) A specific decision shall be taken by a State authority empowered by law to order such measures;

(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;

(c) The free and informed consent of those to be displaced shall be sought;

(d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;

(e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and

(f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

### **Principle 8**

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

### **Principle 9**

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

## **SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT**

### **Principle 10**

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

(a) Genocide;

(b) Murder;

(c) Summary or arbitrary executions; and

(d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

(a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

(b) Starvation as a method of combat;

(c) Their use to shield military objectives from attack or to shield, favour or impede military operations;

(d) Attacks against their camps or settlements; and

(e) The use of anti-personnel landmines.

### **Principle 11**

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

#### **Principle 12**

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

#### **Principle 13**

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

#### **Principle 14**

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

#### **Principle 15**

Internally displaced persons have:

(a) The right to seek safety in another part of the country;

(b) The right to leave their country;

(c) The right to seek asylum in another country; and

(d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

#### **Principle 16**

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.

2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

#### **Principle 17**

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

#### **Principle 18**

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

#### **Principle 19**

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

#### **Principle 20**

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

#### **Principle 21**

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

#### **Principle 22**

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

#### **Principle 23**

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

### **SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE**

#### **Principle 24**

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

#### **Principle 25**

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

#### **Principle 26**

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

#### **Principle 27**

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

### **SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION**

#### **Principle 28**

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

#### **Principle 29**

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

#### **Principle 30**

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

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# BOOK ONE

Charter of the United Nations and Statute  
of the International Court of Justice

Law of treaties

Subjects of international law

Diplomatic and consular relations

International responsibility

Peaceful settlement of international disputes

International peace and security

International human rights law

Movement of persons and international migration law

