Chapter III

Legal aspects of international political relations

In 2004, the International Criminal Court (ICC), established by the 1998 Rome Statute of the International Criminal Court, focused on meeting its primary objective of becoming an independent and credible institution of international criminal justice. Significant developments included the adoption in May of the Regulations of the Court and the creation of an operational Office of the Prosecutor. In July, the Prosecutor opened the first ICC investigations, which concerned alleged crimes falling within the Court’s jurisdiction committed in the territory of the Democratic Republic of the Congo. On 4 October, the Relationship Agreement between ICC and the United Nations, which set out a legal framework for their cooperation in the effective discharge of their respective responsibilities, entered into force. In December, the General Assembly called on States not yet parties to the Rome Statute to consider acceding to it. In other action, the Assembly adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property, the draft of which had been prepared by the Ad Hoc Committee established in 2000 to elaborate the Convention.

The International Law Commission continued to examine topics suitable for the progressive development and codification of international law, provisionally adopting additional draft guidelines on reservations to treaties, as well as draft articles on diplomatic protection and draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.

The Ad Hoc Committee on the convention for suppression of nuclear terrorism and the Sixth (Legal) Committee of the General Assembly continued to elaborate a comprehensive convention on international terrorism and to resolve outstanding issues related to the preparation of a draft international convention for the suppression of acts of nuclear terrorism.

The Ad Hoc Committee on the Scope of Legal Protection under the 1994 Convention on the Safety of United Nations and Associated Personnel continued to consider measures to enhance the existing protective legal regime for UN and associated personnel.

Establishment of the International Criminal Court

The 1998 Rome Statute of the International Criminal Court [YUN 1998, p. 1209], which established ICC as a permanent institution with jurisdiction over persons accused of the most serious crimes of international concern—genocide, crimes against humanity, war crimes and the crime of aggression—entered into force on 1 July 2002 [YUN 2002, p. 1298]. As at 31 December 2004, the Statute had 139 signatories and 97 States parties.

During 2004, the Assembly of States Parties to the Rome Statute, the management oversight and legislative body of ICC, agreed on the future composition of ICC’s Bureau and approved the negotiated draft Relationship Agreement between the United Nations and the Court (for more on the Assembly’s deliberations, see p. 1296).

In 2004, the Security Council did not renew the request it had made in previous years that ICC delay, for a 12-month period, investigation or prosecution of any case involving officials or personnel from a State not party to the Rome Statute, in respect of acts or omissions relating to an operation authorized or established by the UN. That development represented a significant contribution to the Organization’s efforts to promote justice and the rule of law in international affairs.

Relationship Agreement between the UN and ICC

Pursuant to General Assembly resolution 58/79 [YUN 2003, p. 1333], the Secretary-General, by an August note [A/58/874], submitted to the Assembly the draft Relationship Agreement between the United Nations and ICC, which would enter into force upon signature and approval by the General Assembly and the Assembly of States Parties to the Rome Statute. On 7 June, the text of the negotiated draft Agreement was initialled by the Secretary-General’s Acting Legal Counsel and by the Chef de Cabinet of the ICC President in The Hague (Netherlands).

In an 8 September addendum to his note [A/58/874/Add.1], the Secretary-General said that he had been advised by the President of the As-
embassy of States Parties to the Rome Statute of ICC that the Assembly had approved the Agreement. On 13 September, the General Assembly, in resolution 58/318 (below), also approved the Relationship Agreement, allowing ICC to attend and participate in its work as an observer.

On 4 October, the Relationship Agreement entered into force. It set out the legal framework for cooperation between the United Nations and the Court, in order to facilitate the effective discharge of their respective responsibilities. Under the Agreement, the United Nations might provide, at the request of ICC or the Prosecutor, information and documents that were relevant to the Court’s work.

**GENERAL ASSEMBLY ACTION**

On 13 September [meeting 95], the General Assembly adopted resolution 58/318 [draft: A/58/ L.68] without vote [agenda item 154].

**Cooperation between the United Nations and the International Criminal Court**

The General Assembly,

Recalling its resolution 58/79 of 9 December 2003, in which it invited the Secretary-General to take steps to conclude a relationship agreement between the United Nations and the International Criminal Court and to submit the negotiated draft relationship agreement to the General Assembly for approval,

Noting the initialling of the negotiated draft Relationship Agreement between the United Nations and the International Criminal Court on 7 June 2004 in The Hague,

Taking note of the decision of 7 September 2004 taken by the Assembly of States Parties to the Rome Statute of the International Criminal Court at its third session to approve the negotiated draft Relationship Agreement, as noted by the Secretary-General,

Having considered the negotiated draft Relationship Agreement,

1. Approves the draft Relationship Agreement between the United Nations and the International Criminal Court;
2. Decides to apply the Relationship Agreement provisionally pending its formal entry into force;
3. Also decides that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the International Criminal Court or the Assembly of States Parties to the Rome Statute of the International Criminal Court, including under any arrangements that may be otherwise agreed under article 10 of the Relationship Agreement, that may accrue to the United Nations as a result of the implementation of the Relationship Agreement shall be paid in full to the Organization.

**Assembly of States Parties**

The Assembly of States Parties to the Rome Statute of the International Criminal Court met in The Hague for its third annual session (6-10 September) [ICC-ASP/3/25].

The Assembly took note of its President’s report on the activities of the Bureau, which, during the second year (September 2003-September 2004), held meetings aimed at assisting the Assembly in carrying out its activities under the Statute. The Assembly also heard statements by, among others, the Court’s President, Judge Philippe Kirsch (Canada), and the Court’s Prosecutor, Luis Moreno-Ocampo (Argentina). It elected as Deputy Prosecutor, Fatou Bensouda (the Gambia), for a nine-year term, with effect from 1 November 2004, and six members of the Committee on Budget and Finance, whose term of office would commence on 21 April 2005.

The Assembly approved by consensus the Court’s programme budget for 2005, with total appropriations of 66,784,200 euros for the major programmes. It took note of the reports of external auditors on the audit of the Court’s financial statements for the period 1 September 2002 to 31 December 2003 and of the Trust Fund for Victims financial statements for the same period. It requested ICC and the auditors to follow up on matters identified in the report of the Committee on Budget and Finance on its third session. In particular, ICC was encouraged to implement risk management procedures in its operations and to ensure better planning and implementation of procurement. Other areas warranting future attention from the auditors-results-based budgeting, information technology investment and human resources management-were also identified.

The Assembly considered, among other reports, the Registrar’s reports on activities regarding defence counsel, including legal representation of victims and the process of consultation followed, and on the participation of and reparations to victims; the report of the Board of Directors of the Trust Fund for Victims; and the report of the Special Working Group on the Crime of Aggression.

The Assembly approved the negotiated draft Relationship Agreement between ICC and the United Nations (see above). It also agreed on the following future composition of the Bureau: five seats each for the Group of Western European and other States, and the Group of African States; four seats each for the Group of Latin American and Caribbean States, and the Group of Eastern European States; three seats for the Group of Asian States, on the understanding that the next Chair of the Credentials Committee would be elected from a State Party belonging to the Asian Group and who was not a Bureau member, and that the Bureau would extend to the next Chair a standing invitation to participate in its meetings, but without voting rights. That com-

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promise, however, should not extend beyond the term of office of the next Bureau (2005-2008).

The Assembly considered and adopted by consensus the Bureau’s proposal on the procedure for the nomination and election of ICC judges. It also adopted, among other things, the conditions of service and compensation of judges, as well as decisions on tax reimbursement of ICC staff and officials, the protection of the Court’s name, the Staff Pension Committee and the Code of professional conduct for counsel. The Assembly agreed to intensify dialogue with the Court and welcomed the establishment of a Trust Fund for the participation of least developed countries in its activities.

At the same meeting, the Assembly amended rule 29 of its Rules of Procedure, elected by acclamation Bruno Stagno Ugarte (Costa Rica) as President for its fourth to sixth sessions and decided to hold its fourth session in The Hague in November 2005. It also decided that the Committee on Budget and Finance would meet in The Hague in April 2005.

**ICC report.** In July, ICC submitted a report [ICC-ASP/3/10] for consideration by the Assembly of States Parties (see p. 1296) at its September session, describing the Court’s activities since September 2003. Significant developments included: the adoption by ICC judges of the Regulations of the Prosecutor, including staff recruitment, development of structures, priorities, policies and procedures and commencement of operations; the receipt by the Office of the Prosecutor of two referrals from States Parties (Uganda and the Democratic Republic of the Congo) on situations within their territories; the first meeting of members of the Board of Directors of the Trust Fund for Victims; the recruitment of an appropriate level of staff for the institution as a whole; the development of policies and procedures pertaining to issues essential for the future functioning of the Court, including matters relating to the defence, detention, victims, witnesses, counsel, court management and information technology; and the initialling of the Relationship Agreement between ICC and the United Nations. The Court’s overall focus had been on meeting the primary objective of being an independent and credible institution of international criminal justice.

**Report of Secretary-General (August).** In an August report [A/59/686] on the rule of law and transitional justice in conflict and post-conflict societies (see also p. 63), the Secretary-General noted that the most significant recent development in the international community’s struggle to advance the cause of justice and rule of law was the establishment of ICC. The Court was making an impact by putting would-be violators on notice that impunity was not assured and by serving as a catalyst for enacting national laws against the gravest international crimes. It was crucial to ensure that ICC had the requisite resources, capacities, information and support to investigate, prosecute and bring to trial those responsible for war crimes, crimes against humanity and genocide, in situations where national authorities were unable or unwilling to do so. The Security Council had a particular role to play in that regard, given that it was empowered to refer situations to ICC, even in cases where the countries concerned were not States Parties to the Court’s Statute.

**Note of Secretary-General (September).** In a September note [A/59/356], the Secretary-General summarized the activities undertaken by the Secretariat to facilitate an orderly and smooth transition of work from the UN Secretariat to the secretariat of the Assembly of States Parties to the Rome statute of ICC, as called for in General Assembly resolution 58/79 [YUN 2005, p. 1333]. The Secretariat ceased to serve as the provisional secretariat of the Assembly of States Parties on 31 December 2003. In addition to material transmitted previously to the Court’s Registrar, the Secretariat facilitated the transfer of documents concerning the second session of the Assembly of States Parties, held in 2003 [ibid., p. 1332], and other material relevant to assisting the Assembly’s secretariat in its future work, particularly regarding preparations for its third session (see p. 1296).

The Secretariat also took steps to close trust funds administered by the Secretary-General relating to the establishment of ICC and its subsequent activities.

The Security Council, in presidential statement S/PRST/2004/34 of 6 October (see p. 66), thanked the Secretary-General for his August report (see above) and reaffirmed the importance it attached to promoting justice and the rule of law. It would consider, as appropriate, the recommendations contained in the report.

**GENERAL ASSEMBLY ACTION**

On 2 December [meeting 65], the General Assembly, on the recommendation of the Sixth (Legal) Committee [A/59/312], adopted resolution 59/43 without vote (agenda item 146).

**The General Assembly.**

Noting that the Rome Statute of the International Criminal Court was adopted on 17 July 1998 and entered into force on 1 July 2002.

Noting also the adoption of the Regulations of the International Criminal Court, the entry into force of the Agreement on the Privileges and Immunities of the Court, the opening of the first investigations by the Prosecutor and the constitution of the Pre-Trial Chambers of the Court,

Acknowledging the Relationship Agreement between the United Nations and the International Criminal Court ("Relationship Agreement") as approved by the Assembly of States Parties on 7 September 2004 and by the General Assembly in its resolution 58/358 of 15 September 2004, including paragraph 3 of the resolution with respect to the full reimbursement of expenses resulting from the implementation of the Relationship Agreement, and signed by the United Nations and the Court on 4 October 2004, thereby entering into force.

Retaining the historic significance of the adoption of the Rome Statute of the International Criminal Court,

1. Calls upon all States that are not yet parties to the Rome Statute of the International Criminal Court to consider ratifying or acceding to it without delay, and encourages efforts aimed at promoting awareness of the results of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998, the provisions of the Statute and the process leading to the establishment of the International Criminal Court;

2. Calls upon all States to consider becoming parties to the Agreement on the Privileges and Immunities of the International Criminal Court without delay;

3. Welcomes the holding of the third session of the Assembly of States Parties in The Hague from 6 to 10 September 2004, and also welcomes the election of the new President of the Assembly of States Parties, new members to the Committee on Budget and Finance and the second Deputy-Prosecutor, and the important decisions taken on that occasion, including the establishment of the secretariat of the Board of Directors of the Trust Fund for Victims, as well as the adoption of a number of resolutions;

4. Recalls the establishment of the Special Working Group on the Crime of Aggression by the Assembly of States Parties to the Rome Statute of the International Criminal Court, open to all States on an equal footing;

5. Expresses its appreciation to the Secretary-General for providing effective and efficient assistance in the establishment of the International Criminal Court;

6. Takes note of the statement by the President of the Security Council of 6 October 2004, in which the Secretary-General is thanked for his report on the rule of law, in which reference was made to a number of efforts, in particular by the International Criminal Court to promote justice and the rule of law;

7. Welcomes the report of the Secretary-General on the work of the Organization, in which references were made to the International Criminal Court;

8. Welcomes also the steps taken as explained in the report by the Secretariat on the International Criminal Court, amongst which were those to close the various trust funds administered by the Secretary-General relating to the establishment of the Court and subsequent activities;

9. Recalls that pursuant to article 4, paragraph 2, of the Relationship Agreement, the International Criminal Court may attend and participate in the work of the General Assembly in the capacity of observer and that pursuant to article 6 of the Relationship Agreement the Court may submit reports on its activities to the fifty-ninth and following sessions of the General Assembly;

10. Decides to include in the provisional agenda of its sixty-sixth session an item entitled "Report of the International Criminal Court", under which shall be considered, with the Court invited to attend and to participate, pursuant to article 4, paragraph 2, of the Relationship Agreement, any report of the International Criminal Court, pursuant to article 6 of the Relationship Agreement.

On 23 December, the Assembly, decided that the agenda item on ICC remained for consideration during its resumed fifty-ninth (2005) session (decision 59/352).

International Law Commission

The International Law Commission (ILC) held its fifty-sixth session in Geneva in two parts (3 May–4 June; 5 July–6 August) [A/59/10]. During the second part, the International Law Seminar held its fortieth session, which was attended by 24 participants, mostly from developing countries. They observed ILC meetings, attended specially arranged lectures and participated in working groups on specific topics.

ILC, assisted by working groups and a Drafting Committee, continued to advance its work on reservations to treaties by provisionally adopting further guidelines on widening the scope of a reservation, modification and withdrawal of interpretative declarations. It also adopted draft articles on diplomatic protection and on responsibility of international organizations, as well as draft principles on allocation of loss in the case of transboundary harm arising out of hazardous activities. In addition, ILC considered draft articles on the topics of shared natural resources and of unilateral acts of States. It considered the Special Rapporteur’s report, which contained a survey of State practice in respect of unilateral acts. Subsequently, the Commission reconstituted a working group to consider specific examples of such acts.

It also reconstituted the study group on the topic of fragmentation of international law: difficulties arising from the diversification and expansion of international law, to further study the lex
specials rule and the question of self-contained regime.

In furtherance of cooperation with other bodies concerned with international law, the General Assembly also stressed that the reduction of the payment of honorariums to the nominal amount of $1 in Assembly resolution 56/272 [YUN 2002, p. 1492] mostly affected Special Rapporteurs, particularly those from developing countries, as it compromised support for their research. The General Assembly noted that conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics.

Wishing to enhance further, in the context of the revitalization of the debate on the report of the International Law Seminar, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies, the General Assembly:

1. Takes note of the report of the International Law Seminar on the work of its fifty-sixth session, and recommends that the Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the General Assembly;

2. Expresses its appreciation to the International Law Seminar for the work accomplished at its fifty-sixth session, in particular for the completion of the first reading of draft articles on Diplomatic protection and of the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities;

3. Draws the attention of Governments to the importance for the International Law Seminar of having their views on the various aspects involved in the topics on the agenda of the Commission identified in chapter III of its report and in particular on:

(a) The draft articles and commentary on Diplomatic protection;

(b) The draft principles on Allocation of loss in the case of transboundary harm arising out of hazardous activities;

4. Invites Governments, within the context of paragraph 3 above, to provide information to the International Law Seminar regarding:
(a) Their practice, bilateral or regional, relating to the allocation of groundwaterers from transboundary aquifer systems and the management of non-renewable transboundary aquifer systems relating to the topic currently entitled “Shared natural resources”;
(b) State practice on the topic “Unilateral acts of States”;
5. Endorses the decision of the International Law Commission to include in its agenda the topics “Expulsion of aliens” and “Effects of armed conflicts on treaties”;
6. Takes note of paragraphs 362 and 363 of the report of the International Law Commission with regard to its long-term programme of work and the syllabus on the new topic annexed to the report;
7. Invites the International Law Commission to continue taking measures to enhance its efficiency and productivity;
8. Encourages the International Law Commission to continue taking cost-saving measures at its future sessions;
9. Takes note of paragraph 370 of the report of the International Law Commission, and decides that the next session of the Commission shall be held in the United Nations Office at Geneva from 2 May to 3 June and from 4 July to 5 August 2005;
10. Welcomes the enhanced dialogue between the International Law Commission and the Sixth Committee at the fifty-ninth session of the General Assembly; stresses the desirability of further enhancing the dialogue between the two bodies, and in this context encourages, inter alia, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending the sixtieth session of the Assembly;
11. Encourages delegations, during the debate on the report of the International Law Commission to adhere as far as possible to the structured work programme agreed to by the Sixth Committee and to consider presenting concise and focused statements;
12. Encourages Member States to consider being represented at the level of legal adviser during the first week in which the report of the International Law Commission is discussed in the Sixth Committee (International Law Week) to enable high-level discussions on issues of international law;
13. Requests the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;
14. Takes note of paragraphs 371 to 376 of the report of the International Law Commission with regard to cooperation with other bodies, and encourages the Commission to continue the implementation of article 16, paragraph (a), and article 26, paragraphs 1 and 2, of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;
15. Notes that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;
16. Reaffirms its previous decisions concerning the indispensable role of the Codification Division of the Office of Legal Affairs of the Secretariat in providing assistance to the International Law Commission;
17. Approves the conclusions reached by the International Law Commission in paragraph 367 of its report and reaffirms its previous decisions concerning the documentation and summary records of the International Law Commission;
18. Expresses the hope that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants, in particular from developing countries, will be given the opportunity to attend the Seminar, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations Trust Fund for the International Law Seminar;
19. Requests the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue considering ways to improve the structure and content of the Seminar;
20. Also requests the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the fifty-ninth session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;
21. Requests the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and the draft articles adopted on either first or second reading by the Commission;
22. Recommends that the debate on the report of the International Law Commission at the sixtieth session of the General Assembly commence on 24 October 2005.

International liability

Under the topic of international liability for injurious consequences arising out of acts not prohibited by international law, ILCC considered the second report by Special Rapporteur Pemmaraju Sreenivasa Rao (India) on the legal regime for the allocation of loss in case of transboundary harm arising out of hazardous activities [A/CN.4/540]. The report, which analysed comments submitted by States on the main issues concerning allocation of loss, also contained 12 draft principles proposed by the Special Rapporteur. ILCC established a Working Group to examine those proposals and subsequently referred eight draft principles submitted by the Group to the Drafting Committee and also adopted a set of
draft principles on allocation of loss in the case of transboundary harm arising out of hazardous activities.

Unilateral acts of States

ILC considered the seventh report on unilateral acts of States [A/CN.4/542 & Corr.1-3] by Special Rapporteur Victor Rodríguez Cedeño (Venezuela). The report, which was an initial study on the practice of States regarding unilateral acts, took account of the need to identify the relevant rules for codification and progressive development. In order to determine the criteria for the classification of acts and declarations that might represent the practice of States, the Special Rapporteur examined the following three categories: acts by which a State assumed obligations (promise and recognition); acts by which a State waived a right or a legal claim (waiver); and acts by which a State reaffirmed a right or a legal claim (protest). The report also examined conduct that could produce legal effects similar to unilateral acts, and in that context, analysed silence, consent and estoppel and their relationship with unilateral acts and described the practice of some international courts. The report concluded that unilateral acts and declarations of States were mostly addressed to other States and occasionally to other subjects, such as international organizations. They were usually formulated individually or otherwise issued by groups of States, and most were formulated by persons authorized to act at the international level on behalf of the State, such as the head of State or Government, the Minister for Foreign Affairs, ambassadors, heads of delegation and representatives of the State. It could be affirmed, however, that some existing rules were generally applicable to all unilateral acts and forms of conduct. Highlighting the difficulty involved in differentiating conducts from acts and in comparing both, the report advocated the elaboration of a draft definition based on the draft adopted in 2003 [YUN 2003, p. 1336] by the Working Group on Unilateral Acts. ILC reconstituted the Group to focus on a detailed consideration of specific examples of such acts. Other questions, such as that of the bodies which had the power to bind States by unilateral acts, could be settled by reference to the 1969 Vienna Convention on the Law of Treaties [YUN 1969, p. 734].

Communication. On 12 July [A/59/140], Cuba transmitted its observations to ILC on the topic of unilateral acts of States, in response to General Assembly resolution 58/77 [YUN 2003, p. 1334].

Responsibility of international organizations

ILC considered the second report on the topic of responsibility of international organizations [A/CN.4/541] by Special Rapporteur Giorgio Gaja (Italy). The report proposed articles 4 to 7, relating to attribution of conduct, conduct of organs or agents, excess of authority and conduct acknowledged and adopted, which ILC referred to the Drafting Committee. On the Committee’s recommendation, ILC adopted the four articles and the commentaries thereto.

ILC also had before it a June report [A/CN.4/545] submitted pursuant to General Assembly resolution 58/77 [YUN 2003, p. 1334], which contained information received from the UN Secretariat and ten international organizations concerning their practice relevant to the topic of responsibility of international organizations, including cases in which States members of such an organization might be regarded as responsible for the organization’s actions.

Fragmentation of international law

In 2004, ILC reconstituted the study group established in 2002 [YUN 2002, p. 1334] on the topic of fragmentation of international law: difficulties arising from the diversification and expansion of international law. The group considered the preliminary report on the study on the functions and scope of the lex specialis rule and the question of self-contained regimes, as well as outlines on the study on the application of successive treaties relating to the same subject matter (article 30 of the 1969 Vienna Convention on the Law of Treaties); on the study concerning the modification of multilateral treaties between certain parties only (article 41 of the Vienna Convention); on the study on the interpretation of treaties in the light of “any relevant rules of international law applicable in relations between parties” (article 31 (3) (e) of the same Convention); and on the study on hierarchy in international law: jus cogens, obligations erga omnes, Article 103 of the Charter of the United Nations, as conflict rules.

Based on the studies it had considered, the group agreed to draw conclusions regarding the nature and consequences of the phenomenon of “fragmentation” of international law, with the intention of developing a collective document that would be submitted to ILC in 2006. The document would comprise a substantive study on fragmentation and a concise summary containing the proposed conclusions and, if appropriate, guidelines on how to deal with such fragmentation.
Shared natural resources

In March and April, ILC considered the second report on shared natural resources [A/CN.4/539 & Add.1] by Special Rapporteur Chusei Yamada (Japan). In view of the opinions expressed both in ILC and the Sixth Committee on the use of the term “shared resources”, which might refer to the common heritage of mankind or to the notion of shared ownership, the report focused on the sub-topic of transboundary groundwaters without using the term “shared”. The report contained several draft articles formulated to generate comments and more concrete proposals, and to identify additional areas to be addressed. ILC established an open-ended Working Group on Transboundary Groundwaters and agreed that a questionnaire, prepared by the Special Rapporteur, be circulated to Governments and relevant intergovernmental organizations seeking their views and information regarding groundwaters. In particular, ILC would welcome information on Governments’ practice that might be relevant to the principles to be incorporated in the draft articles, particularly on bilateral or regional practice relating to the allocation of groundwaters from transboundary aquifer systems, and to the management of non-renewable transboundary aquifer systems.

International State relations and international law

State succession

The Sixth Committee, on 28 October and 17 November, considered the item on nationality of natural persons in relation to the succession of States. For its consideration of the item, the Committee had before it a note by the Secretariat containing the comments and observations of nine Governments on the question of a convention on the nationality of natural persons in relation to the succession of States [A/50/180 & Add. 1, 2], submitted in response to General Assembly resolutions 54/112 [YUN 1999, p. 1230] and 55/153 [YUN 2000, p. 1242]. ILC, at its fifty-first session in 1999 [YUN 1999, p. 1250], had adopted draft articles on the item and recommended that they be adopted by the Assembly in the form of a declaration. Subsequently, the Assembly, in the resolutions mentioned above, invited Governments to submit comments and observations, with a view to considering the elaboration of such a convention at a future session.

GENERAL ASSEMBLY ACTION

On 2 December [meeting 65], the Assembly, on the recommendation of the Sixth Committee [A/50/504], adopted resolution 59/34 without vote [agenda item 138].

Nationality of natural persons in relation to the succession of States

The General Assembly, Having examined the item entitled “Nationality of natural persons in relation to the succession of States”, Recalling its resolution 54/112 of 9 December 1999, in which it decided to consider at its fifty-fifth session the draft articles on nationality of natural persons in relation to the succession of States prepared by the International Law Commission, Recalling also its resolution 55/153 of 12 December 2000, the annex to which contains the articles on nationality of natural persons in relation to the succession of States, Taking into consideration the comments and observations of Governments and the discussion held in the Sixth Committee at the fifty-ninth session of the General Assembly on the question of nationality of natural persons in relation to the succession of States, in particular, to preventing the occurrence of statelessness as a result of a succession of States,

Taking note, in this regard, of the efforts made at the regional level towards the elaboration of a legal instrument on the avoidance of statelessness in relation to State succession,

1. Reiterates its invitation to Governments to take into account, as appropriate, the provisions of the articles contained in the annex to resolution 55/153, in dealing with issues of nationality of natural persons in relation to the succession of States;

2. Encourages States to consider, as appropriate, at the regional or subregional levels, the elaboration of legal instruments regulating questions of nationality of natural persons in relation to the succession of States, with a view, in particular, to preventing the occurrence of statelessness as a result of a succession of States;

3. Invites Governments to submit comments concerning the advisability of elaborating a legal instrument on the question of nationality of natural persons in relation to the succession of States, including the avoidance of statelessness as a result of a succession of States;

4. Decides to include in the provisional agenda of its sixty-third session the item entitled “Nationality of natural persons in relation to the succession of States”.

State responsibility

Pursuant to General Assembly resolution 56/85 [YUN 2001, p. 128], the item on responsibility of States for internationally wrongful acts was included in the provisional agenda of the Assembly’s fifty-ninth (2004) session. The item was considered and discussed by the Sixth Committee on 28 and 29 October and on 9 and 17 November.
GENERAL ASSEMBLY ACTION

On 2 December [meeting 65], the General Assembly, on the recommendation of the Sixth Committee [A/59/905], adopted resolution 59/35 without vote [agenda item 199].

Responsibility of States for internationally wrongful acts

The General Assembly,

Recalling its resolution 56/83 of 12 December 2001, the annex to which contains the text of the articles on responsibility of States for internationally wrongful acts,

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of responsibility of States for internationally wrongful acts is of major importance in relations between States,

1. Commends once again the articles on responsibility of States for internationally wrongful acts to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action;
2. Requests the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles;
3. Also requests the Secretary-General to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard, and further requests the Secretary-General to submit this material well in advance of its sixty-second session;
4. Decides to include in the provisional agenda of its sixty-second session the item entitled “Responsibility of States for internationally wrongful acts”.

Jurisdictional immunities of States and their property

In accordance with General Assembly resolution 58/74 [YUN 2003, p. 1337], the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property, established by Assembly resolution 55/150 [YUN 2000, p. 1216], reconvened (New York, 1-5 March) to formulate a preamble and final clauses, with a view to completing a convention on jurisdictional immunities of States and their property.

The Working Group of the Whole proceeded with the formulation of a preamble and final clauses for a draft Convention, based on written and oral proposals submitted by delegations, as well as the suggestions of the Committee Chairman. The issues considered included the relationship between the draft articles and the understandings, as well as the provisions of the preamble and final clauses (relationship between the draft Convention and other international agreements; settlement of disputes; signature; ratification, acceptance, approval or accession; entry into force; denunciation; depositary and notifications; authentic texts; and reservations).

The Working Group agreed on a preamble and final clauses, as well as the chapeau for the understandings regarding certain provisions of the draft Convention (annex I). It was also agreed that the draft should be entitled United Nations Convention on Jurisdictional Immunities of States and Their Property. The Working Group, while emphasizing the general understanding that the draft Convention did not cover criminal proceedings, noted that a more appropriate placement for that issue was in a General Assembly resolution.

On 5 March, the Ad Hoc Committee adopted its report [A/59/22], which contained the text of the draft Convention.

The Sixth Committee considered the item on the Convention on 25 and 26 October and on 5 and 9 November. On 25 October, the Chairman of the Ad Hoc Committee introduced the Committee’s report and proposed some corrections to the draft Convention. He said that the Committee had based its work on the draft articles on jurisdictional immunities of States adopted by ILC in 1991 at its forty-third session [YUN 1991, p. 829], and on the discussions of an open-ended working group of the Sixth Committee established by resolution 53/98 [YUN 1998, p. 1215]. The draft Convention was therefore the culmination of 27 years of sometimes difficult work by ILC, the Sixth Committee and the Ad Hoc Committee. The drafting of the text had been possible only because several States belonging to different legal systems and regions had made considerable concessions and demonstrated great flexibility, which was not easy when domestic legislation was already in force. The Chairman, further noting that one of the issues raised was whether military activities were covered by the Convention, clarified that the general understanding had always prevailed that they were not. However, reference should be made to ILC’s 1991 commentary on article 12, stating that “neither did the article affect the question of diplomatic immunities, as provided in article 3, nor did it apply to situations involving armed conflicts”. In addition, according to the preamble, the rules of customary international law continued to govern matters not regulated by the provisions of the Convention. In fact, that was the general approach of the Convention: it did not apply where there was a special immunity regime, including immunities ratione personae (lex specialis).

GENERAL ASSEMBLY ACTION

On 2 December [meeting 65], the General Assembly, on the recommendation of the Sixth
Committee [A/59/508], adopted resolution 59/38 without vote [agenda item 42].

United Nations Convention on Jurisdictional Immunities of States and Their Property

The General Assembly,


Recalling also that the International Law Commission submitted a final set of draft articles, with commentaries, on the law of jurisdictional immunities of States and their property in chapter II of its report on the work of its forty-third session,

Recalling further the reports of the open-ended Working Group of the Sixth Committee, as well as the report of the Working Group on Jurisdictional Immunities of States and Their Property of the International Law Commission, submitted in accordance with General Assembly resolution 53/98 of 8 December 1998,

Recalling that in its resolution 55/150 it decided to establish the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property, open also to participation by States members of the specialized agencies, to further the work done, consolidate areas of agreement and resolve outstanding issues with a view to elaborating a generally acceptable instrument based on the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission and also on the discussions of the open-ended Working Group of the Sixth Committee,

Having considered the report of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property,

Stressing the importance of uniformity and clarity in the law of jurisdictional immunities of States and their property, and emphasizing the role of a convention in this regard,

Noting the broad support for the conclusion of a convention on jurisdictional immunities of States and their property,

Taking into account the statement of the Chairman of the Ad Hoc Committee introducing the report of the Ad Hoc Committee,

1. Expresses its deep appreciation to the International Law Commission and the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property for their valuable work on the law of jurisdictional immunities of States and their property;
2. Agrees with the general understanding reached in the Ad Hoc Committee that the United Nations Convention on Jurisdictional Immunities of States and Their Property does not cover criminal proceedings;
3. Adopts the United Nations Convention on Jurisdictional Immunities of States and Their Property, which is contained in the annex to the present resolution, and requests the Secretary-General as depository to open it for signature;
4. Invites States to become parties to the Convention.

Annex

United Nations Convention on Jurisdictional Immunities of States and Their Property

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), ref-
ere 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

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
Procedings 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 if:
   (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 service.

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 or 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 (a) or (b) 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.

3. 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.

4. Each State Party may, at the time of signature, ratification, acceptance or approval of, or accession to, 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.

5. Any State Party that has made a declaration in accordance with paragraphs 1 and 2 with respect to any other 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
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 denounced 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 prejudge 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 terrorism

Conventions on international terrorism and for suppression of acts of nuclear terrorism

Ad Hoc Committee

In accordance with General Assembly resolution 58/81 [YUN 2003, p. 1339], the Ad Hoc Committee on the convention for suppression of nuclear terrorism, established by Assembly resolution 51/210 [YUN 1996, p. 1288], held its eighth session (New York, 28 June–2 July) to continue, within the framework of a working group of the Sixth Committee, to elaborate a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism. It kept on its agenda the question of convening a high-level conference under UN auspices to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

The Ad Hoc Committee held a general exchange of views on issues within its mandate and proceeded with informal consultations regarding the draft comprehensive convention on international terrorism and on outstanding issues pertaining to articles 18 and 2 bis of the draft international convention for the suppression of acts of nuclear terrorism. The Chairman informed the Committee that, although some delegations had informal contacts on the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations, no specific proposals on the issue were set forth. The Chairman also informed the Committee that the Bureau had prepared a text of the draft comprehensive convention on international terrorism, which held two open-ended working group on measures to eliminate international terrorism, which held two meetings (New York, 5 and 8 October). Before it were the reports of the Ad Hoc Committee on its sixth [YUN 2002, p. 1306], seventh [YUN 2003, p. 1338] and eighth sessions (see above); the 1998 report of the Sixth Committee working group [YUN 1998, p. 1216], as well as the 2000 [YUN 2000, p. 1288], 2001 [YUN 2001, p. 1225], 2002 [YUN 2002, p. 1307] and 2003 [YUN 2003, p. 1338] reports.

The working group held informal consultations on outstanding issues on the two draft conventions, and on 8 October, the coordinators orally reported on the results of those consultations. The working group was informed by its Chairman that several delegations had indicated that consultations on the question of convening a high-level conference were continuing at the political level in their capitals. Also on 8 October, the group adopted its report [A/C.6/59/L.10], which it referred to the Sixth Committee with a recommendation that work on finalizing the texts of the two draft conventions continue, building on what had already been accomplished.

Measures to eliminate terrorism

In accordance with General Assembly resolution 50/53 [YUN 1995, p. 1330], the Secretary-General, in August, issued his annual report [A/59/210 & Corr.1] containing information on measures taken at the national and international levels by 20 States and 8 UN system entities to implement the 1994 Declaration on Measures to Eliminate International Terrorism, approved by Assembly resolution 49/60 [YUN 1994, p. 1294] and Security Council resolution 1269(1999) [YUN 1999, p. 1240]. It listed 22 international instruments pertaining to terrorism, indicating the status of State participation in each, and also provided information on workshops and training courses on combating terrorism by three UN bodies. The report noted that the Secretariat had prepared the material to be published in the second volume of the United Nations Legislative Series entitled “National Law and regulations on the Prevention and Suppression of International Terrorism, Part II”.

Further measures

In other action, the Commission on Crime Prevention and Criminal Justice, at its thirteenth session (11–20 May) [E/2004/30], recommended to the Economic and Social Council for approval a draft resolution for adoption by the General Assembly entitled “Strengthening international co-
operation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the United Nations Office on Drugs and Crime. The resolution was approved on 21 July by the Council as resolution 2004/19 (see p. 1125) and adopted on 20 December by the Assembly as resolution 59/153 (see p. 1125).

GENERAL ASSEMBLY ACTION

On 2 December [meeting 65], the General Assembly, on the recommendation of the Sixth Committee [A/59/541], adopted resolution 59/46 without vote [agenda item 148].

Measures to eliminate international terrorism

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,

Recalling also the United Nations Millennium Declaration,

Recalling further the Declaration on Measures to Eliminate International Terrorism, contained in the annex to General Assembly resolution 49/60 of 9 December 1994, and welcoming the celebration this year of the tenth anniversary of its adoption, and recalling the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, contained in the annex to resolution 51/210 of 17 December 1996,

Recalling all General Assembly and Security Council resolutions on measures to eliminate international terrorism,

Convinced of the importance of the consideration of measures to eliminate international terrorism by the General Assembly as the universal organ having competence to do so,

Deeply disturbed by the persistence of terrorist acts, which have been carried out worldwide,

Reaffirming its strong condemnation of the heinous acts of terrorism that have caused enormous loss of human life, destruction and damage, including those which prompted the adoption of General Assembly resolution 56/1 of 12 September 2001, as well as Security Council resolutions 1368(2001) of 12 September 2001, 1373(2001) of 28 September 2001 and 1377(2001) of 12 November 2001, and those that have occurred since the adoption of General Assembly resolution 58/31 of 9 December 2003,

Recalling the strong condemnation of the atrocious and deliberate attack against the headquarters of the United Nations Assistance Mission for Iraq in Baghdad on 19 August 2003 in General Assembly resolution 57/338 of 15 September 2003 and Security Council resolution 1502(2003) of 26 August 2003,

Affirming that States must ensure that any measure taken to combat terrorism complies with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law,

Stressing the need to strengthen further international cooperation among States and among international organizations and agencies, regional organizations and arrangements and the United Nations in order to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomever committed, in accordance with the principles of the Charter, international law and the relevant international conventions,

Noting the role of the Security Council Committee established pursuant to resolution 1373(2001) concerning counter-terrorism in monitoring the implementation of that resolution, including the taking of the necessary financial, legal and technical measures by States and the ratification or acceptance of the relevant international conventions and protocols,

Mindful of the need to enhance the role of the United Nations and the relevant specialized agencies in combating international terrorism, and of the proposals of the Secretary-General to enhance the role of the Organization in this respect,

Mindful also of the essential need to strengthen international, regional and subregional cooperation aimed at enhancing the national capacity of States to prevent and suppress effectively international terrorism in all its forms and manifestations,

Reiterating its call upon States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Emphasizing that tolerance and the enhancement of dialogue among civilizations are among the most important elements in promoting cooperation and success in combating terrorism,

Reaffirming that no terrorist act can be justified in any circumstances,

Taking note of the Final Document of the Thirteenth Conference of Heads of State or Government of Non-Aligned Countries, adopted in Kuala Lumpur on 27 February 2003, which reiterated the collective position of the Movement of Non-Aligned Countries on terrorism and reaffirmed the previous initiative of the Twelfth Conference of Heads of State or Government of Non-Aligned Countries, held in Durban, South Africa, from 29 August to 3 September 1998, calling for an international summit conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations, as well as other relevant initiatives,

Bearing in mind the recent developments and initiatives at the international, regional and subregional levels to prevent and suppress international terrorism, including those identified in the annex to the present resolution,

Recalling its decision in resolutions 54/110 of 9 December 1999, 55/158 of 12 December 2000, 56/88 of 12 December 2001, 57/27 of 19 November 2002 and 58/81 that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should address, and keep on its agenda, the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organ-
ized response of the international community to terrorism in all its forms and manifestations.

Aware of its resolutions 57/20 of 18 December 2002 and 58/187 of 22 December 2003,

Noting regional efforts to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomsoever committed, including through the elaboration of and adherence to regional conventions,

Having examined the report of the Secretary-General, the report of the Ad Hoc Committee established pursuant to resolution 58/81,

1. Strongly condemns all acts, methods and practices of terrorism in all its forms and manifestations as criminal and unpredictable, wherever and by whomsoever committed;
2. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unpredictable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them;
3. Reiterates its call upon all States to adopt further measures in accordance with the Charter of the United Nations and the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international cooperation in combating terrorism and, to that end, to consider in particular the implementation of the measures set out in paragraphs 3 (a) to (f) of resolution 51/210;
4. Also reiterates its call upon all States, with the aim of enhancing the efficient implementation of relevant legal instruments, to intensify, as and where appropriate, the exchange of information on facts related to terrorism and, in so doing, to avoid the dissemination of inaccurate or unverified information;
5. Reiterates its call upon States to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities;
6. Urges States to ensure that their nationals or other persons and entities within their territory that wilfully provide or collect funds for the benefit of persons or entities who commit, or attempt to commit, facilitate or participate in the commission of terrorist acts are punished by penalties consistent with the grave nature of such acts;
7. Reminds States of their obligations under relevant international conventions and protocols and Security Council resolutions, including Security Council resolution 1573(2001), to ensure that perpetrators of terrorist acts are brought to justice;
8. Reaffirms that international cooperation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter, international law and relevant international conventions;
9. Urges all States that have not yet done so to consider, as a matter of priority, and in accordance with Security Council resolutions 1573(2001), and 1566 (2004) of 8 October 2004, becoming parties to the relevant conventions and protocols as referred to in paragraph 6 of General Assembly resolution 51/210, as well as the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, and calls upon all States to enact, as appropriate, the domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial the perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional organizations to that end;
10. Urges States to cooperate with the Secretary-General and with one another, as well as with interested intergovernmental organizations, with a view to ensuring, where appropriate within existing mandates, that technical and other expert advice is provided to those States requiring and requesting assistance in becoming parties to and implementing the conventions and protocols referred to in paragraph 9 above;
11. Notes with appreciation and satisfaction that, consistent with the call contained in paragraph 7 of resolution 58/81, a number of States became parties to the relevant conventions and protocols referred to therein, thereby realizing the objective of wider acceptance and implementation of those conventions;
12. Reaffirms the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and calls upon all States to implement them;
13. Calls upon all States to cooperate to prevent and suppress terrorist acts;
14. Urges all States and the Secretary-General, in their efforts to prevent international terrorism, to make the best use of the existing institutions of the United Nations;
15. Welcomes the continuing efforts of the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime in Vienna, after reviewing existing possibilities within the United Nations system, to enhance, through its mandate, the capabilities of the United Nations in the prevention of terrorism, and recognizes, in the context of Security Council resolution 1573(2001), its role in assisting States in becoming parties to and implementing the relevant international conventions and protocols relating to terrorism;
16. Invites regional intergovernmental organizations to submit to the Secretary-General information on the measures they have adopted at the regional level to eliminate international terrorism, as well as on intergovernmental meetings held by those organizations;
17. Notes the progress attained in the elaboration of the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism during the meetings of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 and the Working Group of the Sixth Committee established pursuant to General Assembly resolution 58/81;
18. Decides that the Ad Hoc Committee shall, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism and to resolve the outstanding issues relating to the elaboration of the draft international convention for the
suppression of acts of nuclear terrorism as a means of further developing a comprehensive legal framework of conventions dealing with international terrorism, and shall keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations;

19. Decides also that the Ad Hoc Committee shall meet from 28 March to 1 April 2005 in order to fulfil the mandate referred to in paragraph 18 above, and that the work shall continue, if necessary, during the sixty-sixth session of the General Assembly, within the framework of the Working Group of the Sixth Committee;

20. Requests the Secretary-General to continue to provide the Ad Hoc Committee with the necessary facilities for the performance of its work;

21. Also requests the Secretary-General to make a comprehensive inventory of the response of the Secretariat to terrorism as part of his report on measures to eliminate international terrorism;

22. Requests the Ad Hoc Committee to report to the General Assembly at its fifty-ninth session in the event of the completion of the draft comprehensive convention on international terrorism or the draft international convention for the suppression of acts of nuclear terrorism;

23. Also requests the Ad Hoc Committee to report to the General Assembly at its sixty-sixth session on progress made in the implementation of its mandate;

24. Decides to include in the provisional agenda of its sixty-sixth session the item entitled “Measures to eliminate international terrorism”.

Annex

African Union
Second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, and inauguration of the African Centre for Studies and Research on Terrorism, Algiers, 13 and 14 October 2004

Andean Community
Subregional workshop on the regional fight against terrorism, Lima, 26 and 27 January 2004

Association of Southeast Asian Nations
Fourth ASEAN Ministerial Meeting on Transnational Crime, Bangkok, 8 January 2004
First ASEAN Plus Three Ministerial Meetings on Transnational Crime, Bangkok, 10 January 2004

European Union
European Council meetings with a focus on terrorism, Brussels, 25 and 26 March and 17 and 18 June 2004

Organization of American States
Fourth regular session of the Inter-American Committee against Terrorism, Montevideo, 28-30 January 2004

Shanghai Cooperation Organization
Summit Meeting of the Shanghai Cooperation Organization for the establishment of the Regional Anti-Terrorism Structure, Tashkent, 17 June 2004

South Asian Association for Regional Cooperation
Twelfth SAARC Summit, Islamabad, 4-6 January 2004

Other meetings
Bali Regional Ministerial Meeting on Counter-Terrorism, convened by Indonesia and Australia, Bali, Indonesia, 4 and 5 February 2004

On 23 December, the Assembly, by decision 59/552, decided that the item on measures to eliminate international terrorism would remain for consideration during its resumed fifty-ninth (2005) session.

Additional Protocols I and II to the 1949 Geneva Conventions
In response to General Assembly resolution 57/14 [YUN 2002, p. 1309], the Secretary-General submitted a September report with a later addendum [A/59/521 & Add.1] on the status of the two 1977 Protocols Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of armed conflicts [YUN 1977, p. 706], as well as on measures taken to strengthen the existing body of international humanitarian law with respect to, among other things, its dissemination and implementation at the national level, based on information received from a total of 19 States and the International Committee of the Red Cross. Annexed to the report was a list of 102 States parties to one or both of the Protocols as at 2 June 2004.

GENERAL ASSEMBLY ACTION
On 2 December [meeting 65], the General Assembly, on the recommendation of the Sixth Committee [A/59/506], adopted resolution 59/36 without vote [agenda item 140].

Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

The General Assembly,

Having considered the report of the Secretary-General,

Considering Member States and the International Committee of the Red Cross for their contribution to the report of the Secretary-General,

Convinced of the continuing value of established humanitarian rules relating to armed conflicts and the need to respect and ensure respect for those rules in all circumstances within the scope of the relevant interna-
tional instruments, pending the earliest possible termination of such conflicts.

Stressing the possibility of making use of the International Fact-Finding Commission in relation to an armed conflict, pursuant to article 90 of Protocol I to the Geneva Conventions of 1949.

Stressing also the possibility for the International Fact-Finding Commission to facilitate, through its good offices, the restoration of an attitude of respect for the Geneva Conventions and Protocol I.

Stressing further the need to consolidate the existing body of international humanitarian law through its universal acceptance and the need for wide dissemination and full implementation of such law at the national level, and expressing concern about all violations of the Geneva Conventions and the two Additional Protocols.

Noting with satisfaction the increasing number of national commissions and other bodies involved in advising authorities at the national level on the implementation, dissemination and development of international humanitarian law,

Noting with appreciation the meetings of representatives of those bodies organized by the International Committee of the Red Cross to facilitate the sharing of concrete experience and the exchange of views on their roles and on the challenges they face,

Mindful of the role of the International Committee of the Red Cross in offering protection to the victims of armed conflicts,

Noting with appreciation the continuing efforts of the International Committee of the Red Cross to promote and disseminate knowledge of international humanitarian law, in particular the Geneva Conventions and the two Additional Protocols,

Recalling that the Twenty-eighth International Conference of the Red Cross and Red Crescent stressed the need to reinforce the implementation of and respect for international humanitarian law,

Noting the fiftieth anniversary of the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the two Protocols thereto, and the importance of the protection of cultural property in the event of armed conflicts,

Recalling the entry into force, on 9 March 2004, of the second Protocol to the 1954 Hague Convention, and appreciating the ratifications received so far,

Acknowledging the fact that the Rome Statute of the International Criminal Court, which entered into force on 1 July 2002, includes the most serious crimes of international concern under international humanitarian law, and that the Statute, while recognizing that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such crimes, shows the determination of the international community to put an end to impunity for the perpetrators of such crimes and thus to contribute to their prevention,

Acknowledging also the usefulness of discussing in the General Assembly the status of instruments of international humanitarian law relevant to the protection of victims of armed conflicts,

1. **Appreciates** the virtually universal acceptance of the Geneva Conventions of 1949, and notes the trend towards a similarly wide acceptance of the two Additional Protocols of 1977;

2. **Calls upon** all States parties to the Geneva Conventions that have not yet done so to consider becoming parties to the Additional Protocols at the earliest possible date;

3. **Calls upon** all States that are already parties to Protocol I, or those States not parties, on becoming parties to Protocol I, to make the declaration provided for under article 90 of that Protocol;

4. **Calls upon** all States that have not yet done so to consider becoming parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the two Protocols thereto, and to other relevant treaties on international humanitarian law relating to the protection of victims of armed conflict;

5. **Calls upon** all States parties to the Protocols Additional to the Geneva Conventions to ensure their wide dissemination and full implementation;

6. **Notes with appreciation** the Declaration and Agenda for Humanitarian Action adopted by the Twenty-eighth International Conference of the Red Cross and Red Crescent, which noted that all States must take national measures to implement international humanitarian law, including training of the armed forces and making this law known among the general public, as well as the adoption of legislation to punish war crimes in accordance with their international obligations;

7. **Affirms** the necessity of making the implementation of international humanitarian law more effective;

8. **Welcomes** the advisory service activities of the International Committee of the Red Cross in supporting efforts made by Member States to take legislative and administrative action to implement international humanitarian law and in promoting the exchange of information on those efforts between Governments;

9. **Also welcomes** the increasing number of national commissions or committees for the implementation of international humanitarian law and for promoting the incorporation of treaties on international humanitarian law into national law and disseminating the rules of international humanitarian law;

10. **Calls upon** States to consider becoming parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

11. **Requests** the Secretary-General to submit to the General Assembly at its sixty-first session a report on the status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, inter alia, with respect to its dissemination and full implementation at the national level, based on information received from Member States and the International Committee of the Red Cross;

12. **Decides** to include in the provisional agenda of its sixty-first session the item entitled “Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts”.
Safety and security of United Nations and associated personnel

Ad Hoc Committee consideration. The Ad Hoc Committee on the Scope of Legal Protection under the 1994 Convention on the Safety of United Nations and Associated Personnel [YUN 1994, p. 1289], established by General Assembly resolution 56/89 [YUN 2001, p. 1227], held its third session (New York, 12-16 April) on ways to expand the scope of the legal protection under the Convention, including by means of a legal instrument.

Accordingly, a working group of the whole Committee deliberated on the relation between a possible protocol and the Convention and the definition of UN operations, to ascertain which UN operations would fall within the expanded scope of the Convention. The group also deliberated on the respective responsibilities of host States and personnel engaged in UN operations and the scope of legal protection under the Convention in relation to international humanitarian law. It had before it two proposals: one by New Zealand, containing a draft optional additional protocol aimed at preserving the Convention’s regime for States preferring to be bound exclusively by its provisions, while allowing those wishing to expand the Convention’s scope to do so by becoming parties to the protocol as well as to the Convention; and a second by Costa Rica, which sought to delineate the scope of application of the mutually exclusive regimes of international humanitarian law and the Convention’s protective regime.

On 16 April, the Ad Hoc Committee adopted its report [A/59/32], which annexed the proposals and recommended that the Assembly renew its mandate for 2005, to enable it to continue its work to expand the scope of legal protection under the Convention.

Report of Secretary-General. In response to General Assembly resolution 58/82 [YUN 2003, p. 1342], the Secretary-General submitted a report on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel [A/59/226]. The report discussed developments concerning the incorporation of key provisions of the Convention into status-of-forces and status-of-mission agreements; circumstances supporting a declaration of exceptional risk pursuant to article 1 (c) (ii) of the Convention; the provision of information on matters of fact relevant to the Convention’s application; the provision, to requesting Member States, of the list of non-governmental organizations (NGOs) contractually linked to the United Nations, and associated personnel; the provision of information on matters of fact relevant to the Convention’s application; the provision, to requesting Member States, of the list of non-governmental organizations (NGOs) contractually linked to the United Nations, and associated personnel; the provision of information on matters of fact relevant to the Convention’s application; the provision, to requesting Member States, of the list of non-governmental organizations (NGOs) contractually linked to the Organization; and practical measures taken to strengthen the protection of UN personnel, particularly locally recruited staff.

The Secretary-General observed that the Convention’s core provisions had been introduced into a growing number of recently concluded status-of-forces and status-of-mission agreements, effectively extending its scope of application to UN operations in respect of which no declaration was made, or in countries which were not signatories to the Convention. However, the General Assembly should continue to pressure Member States to prosecute those responsible for crimes against UN and associated personnel, thus ensuring full application of the Convention in theory and practice. Noting that no declarations of a “risky operation” had been made, including in Afghanistan, where UN operations remained risky, the Secretary-General said efforts to expand the Convention’s scope of application to all UN operations by means of a legal instrument dispensing with the need for a declaration should be encouraged.

No request for information in matters relevant to the Convention’s application had been received by the UN Secretariat, and few States had requested to be provided with the list of NGOs contractually linked to the United Nations. Such requests had been met at both the field and Headquarters levels. In most cases, however, tripartite agreements concluded between a UN agency, the Government and the NGO implementing partner had obviated the need for such a request. Since locally recruited personnel remained vulnerable to attacks, additional measures, short of evacuation, had been taken to strengthen their security.

Sixth Committee working group. On 4 October, the Sixth Committee established a working group to continue the work of the Ad Hoc Committee. The report on the group’s work [A/C.6/59/L.9] contained details of its discussions on expansion of the scope of legal protection under the Convention, on the basis of the Chairman’s text, which was annexed to the report, and on the revised text of a proposal by Costa Rica (see above) concerning the relationship between the Convention and international humanitarian law. Delegations, voicing concern over continued attacks and acts of violence against UN and associated personnel, expressed support for the preparation of an additional protocol to the Convention, which would broaden the scope of its protective regime, cover certain UN operations other than peacekeeping operations and dispense with the requirement for a declaration of exceptional risk. The working group recommended that the Chairman’s text be used as the basis for the Ad Hoc Committee’s work and that
the proposal by Costa Rica be considered by the Committee separately.

GENERAL ASSEMBLY ACTION

On 2 December [meeting 65], the General Assembly, on the recommendation of the Sixth Committee [A/50/58 & Corr.1], adopted resolution 59/47 without vote [agenda item 149].

Scope of legal protection under the
Convention on the Safety of United Nations
and Associated Personnel

The General Assembly,
Recalling its resolution 58/82 of 9 December 2003 on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, as well as the adoption by the Security Council of resolution 1502(2003) on 26 August 2003,
Recalling also its resolution 57/338 of 15 September 2003, in which it strongly condemned the atrocious and deliberate attack against the headquarters of the United Nations Assistance Mission in Iraq in Baghdad on 19 August 2003,
Recalling further its resolution 49/50 of 9 December 1994, by which it adopted the Convention on the Safety of United Nations and Associated Personnel,
Recalling the letter dated 24 October 2000 addressed to the President of the Security Council on behalf of the global staff of the United Nations system, drawing attention to the safety and security problems faced by United Nations and associated personnel,
Recalling also the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel and the recommendations contained therein, and also recalling the further report of the Secretary-General on this issue,
Reaffirming the need to promote and ensure respect for the principles and rules of international law, including international humanitarian law, as well as relevant provisions of human rights and refugee law,
Reaffirming also the obligation of all humanitarian personnel and United Nations and associated personnel to respect the national laws of the country in which they are operating, in accordance with international law and the Charter of the United Nations,
Deeply concerned by the increasing dangers and security risks faced by United Nations and associated personnel at the field level, and mindful of the need to provide the fullest possible protection for their security,
Expressing its concern that locally recruited personnel are particularly vulnerable to attacks directed at the United Nations,
Paying tribute to the courage of those who have served and who continue to serve in United Nations operations throughout the world, in particular those who have lost their lives in the course of their duties,
Deeply concerned that perpetrators of attacks against United Nations and associated personnel seemingly operate with impunity,
Welcoming the tenth anniversary of the adoption of the Convention, which entered into force on 15 January 1999, and noting that the Convention has been ratified or acceded to by seventy-seven States as at the date of the present resolution,
Underlining the need to promote the universality of the Convention and thereby strengthen the safety and security of United Nations and associated personnel,
Having considered the report of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel, established pursuant to resolution 56/89 of 12 December 2001, and the report of the Working Group of the Sixth Committee, and bearing in mind the recommendations of the Working Group contained in paragraphs 7 and 8 of its report,
1. Expresses its appreciation for the work done by the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel;
2. Urges States to take all necessary measures, in accordance with their international obligations, to prevent crimes against United Nations and associated personnel from occurring;
3. Also urges States to ensure that crimes against United Nations and associated personnel do not go unpunished and that the perpetrators of such crimes are brought to justice;
4. Affirms the obligation of all States to comply fully with their obligations under the relevant rules and principles of international law in relation to the safety and security of United Nations and associated personnel;
5. Calls upon all States to consider becoming parties to and to respect fully their obligations under the relevant international instruments, in particular the Convention on the Safety of United Nations and Associated Personnel;
6. Recommends that the Secretary-General continue to seek the inclusion of, and that host countries include, key provisions of the Convention, including those regarding the prevention of attacks against members of an operation, the establishment of such attacks as crimes punishable by law and the prosecution or extradition of offenders, in future as well as, if necessary, in existing status-of-forces, status-of-mission and host country agreements negotiated between the United Nations and those countries, mindful of the importance of the timely conclusion of such agreements;
7. Recommends also that, consistent with his existing authority, the Secretary-General advise the Security Council or the General Assembly, as appropriate, where in his assessment circumstances would support a declaration of exceptional risk for the purposes of article 1 (c)(ii) of the Convention;
8. Confirms that, consistent with his existing authority, the Secretary-General, who has knowledge of the facts and easy access to the information, may provide information, upon the request of a State, on matters of fact relevant to the application of the Convention, such as the fact and content of any declaration of exceptional risk by the Security Council or the General Assembly or any agreement concluded between the United Nations and a humanitarian non-governmental organization or agency;
9. Notes that the Secretary-General has prepared a standardized provision for incorporation into the agreements concluded between the United Nations
and humanitarian non-governmental organizations or agencies for the purposes of clarifying the application of the Convention to persons deployed by those organizations or agencies, and requests the Secretary-General to make available to Member States the names of organizations or agencies that have concluded such agreements.

10. Urges the Secretary-General and relevant bodies to continue to take such practical measures as are within their authority and existing institutional mandates to strengthen protection for United Nations and associated personnel, including locally recruited personnel, who are particularly vulnerable and account for the majority of casualties among United Nations or associated personnel;

11. Decides that the Ad Hoc Committee established under resolution 56/89 shall reconvene for one week, from 11 to 15 April 2005, with a mandate to expand the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, including inter alia, by means of a legal instrument, and that the work shall continue during the sixtieth session of the General Assembly within the framework of a working group of the Sixth Committee;

12. Requests the Ad Hoc Committee to submit a report on its work to the General Assembly at the sixtieth session;

13. Requests the Secretary-General to report to the General Assembly at its sixtieth session on the measures taken to implement the present resolution;

14. Decides to include in the provisional agenda of its sixtieth session the item entitled "Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel".

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**Diplomatic relations**

**Protection of diplomatic and consular missions and representatives**

As at 31 December 2004, the States parties to the following conventions relating to the protection of diplomats and diplomatic and consular relations were: 181 States parties to the 1961 Vienna Convention on Diplomatic Relations [YUN 1961, p. 322], 50 parties to the Optional Protocol concerning the acquisition of nationality [ibid., p. 356] and 62 parties to the Optional Protocol concerning compulsory settlement of disputes [ibid.].


**Report of Secretary-General.** In a July report with a later addendum [A/59/125 & Add.1], the Secretary-General summarized information received from 13 States pursuant to paragraphs 10 and 12 of General Assembly resolution 57/15 [YUN 2002, p. 1313]. Five reported instances of serious violations of the protection, security and safety of diplomatic and consular missions and representatives.

The report also updated the status of State participation in the conventions named above.

**ILC consideration.** ILC, at its fifty-sixth session [A/59/10], had before it the fifth report of Special Rapporteur Christopher John R. Dugard (South Africa) on diplomatic protection [A.CN.4/358]. The report addressed issues relating to the protection of persons in a territory controlled or occupied by a State or administered by an international intergovernmental organization and the delegation or transfer of the right of diplomatic protection. It also proposed, for ILC’s consideration, several draft articles dealing with the subject of competing claims to the protection of an individual by an international organization and a State, and the protection of a ship’s crew by the flag State. ILC, following its deliberations, referred to the Drafting Committee draft articles 26 and 21 addressing human rights, diplomatic protection and a general saving clause, with a view to reformulating draft article 21 on the specific subject of lex specialis. The Commission requested that the Drafting Committee consider elaborating a provision on the connection between the protection of ships’ crews and diplomatic protection, and to consider also the possible relationship between the clean hands doctrine and diplomatic protection, for discussion at the Commission’s next session. ILC adopted on first reading 19 draft articles on diplomatic protection and decided to transmit them, through the Secretary-General, to Governments for comments.

**GENERAL ASSEMBLY ACTION**

On 2 December [meeting 65], the General Assembly, on the recommendation of the Sixth Committee [A/59/507], adopted resolution 59/37 without vote [agenda item 141].

**Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives**

The General Assembly,

Having considered the report of the Secretary-General,

Conscious of the need to develop and strengthen friendly relations and cooperation among States,

Convinced that respect for the principles and rules of international law governing diplomatic and consular relations is a basic prerequisite for the normal conduct of relations among States and for the fulfil-
ment of the purposes and principles of the Charter of the United Nations,

Alarmed by the recent acts of violence against diplomatic and consular representatives, as well as against representatives of international intergovernmental organizations and officials of such organizations, which have endangered or taken innocent lives and seriously impeded the normal work of such representatives and officials,

Expressing sympathy for the victims of such illegal acts,

Concerned at the failure to respect the inviolability of diplomatic and consular missions and representatives,

Recalling that, 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,

Recalling also that diplomatic and consular premises must not be used in any manner incompatible with the functions of diplomatic and consular missions and representatives,

Emphasizing the duty of States to take all appropriate measures as required by international law, including measures of a preventive nature, and to bring offenders to justice,

Welcoming measures already taken by States to this end in conformity with their international obligations,

Convinced that the role of the United Nations, which includes the reporting procedures established pursuant to General Assembly resolution 35/168 of 15 December 1980 and further elaborated in subsequent Assembly resolutions, is important in promoting efforts to enhance the protection, security and safety of diplomatic and consular missions and representatives,

1. Takes note of the report of the Secretary-General;

2. Strongly condemns acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and officials of such organizations, and emphasizes that such acts can never be justified;

3. Urges States to strictly observe, implement and enforce the principles and rules of international law governing diplomatic and consular relations and, in particular, to ensure, in conformity with their international obligations, the protection, security and safety of the missions, representatives and officials mentioned in paragraph 2 above officially present in territories under their jurisdiction, including practical measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts against the security and safety of such missions, representatives and officials;

4. Also urges States to take all necessary measures at the national and international levels to prevent any acts of violence against the missions, representatives and officials mentioned in paragraph 2 above, and to ensure, with the participation of the United Nations where appropriate, that such acts are fully investigated with a view to bringing offenders to justice;

5. Recommends that States cooperate closely through, inter alia, contacts between the diplomatic and consular missions and the receiving State with regard to practical measures designed to enhance the protection, security and safety of diplomatic and consular missions and representatives and with regard to the exchange of information on the circumstances of all serious violations thereof;

6. Urges States to take all appropriate measures, in accordance with international law, at the national and international levels, to prevent any abuse of diplomatic or consular privileges and immunities, in particular serious abuses, including those involving acts of violence;

7. Recommends that States cooperate closely with the State in whose territory abuses of diplomatic and consular privileges and immunities may have occurred, including by exchanging information and providing assistance to its judicial authorities in order to bring offenders to justice;

8. Calls upon States that have not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives;

9. Calls upon States, in cases where a dispute arises in connection with a violation of their international obligations concerning the protection of the missions or the security of the representatives and officials mentioned in paragraph 2 above, to make use of the means available for peaceful settlement of disputes, including the good offices of the Secretary-General, and requests the Secretary-General, when he deems it appropriate, to offer his good offices to the States directly concerned;

10. Requests:

(a) All States to report to the Secretary-General as promptly as possible serious violations of the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations;

(b) The State in which the violation took place—and, to the extent possible, the State where the alleged offender is present—to report to the Secretary-General as promptly as possible on measures taken to bring the offender to justice and eventually to communicate, in accordance with its laws, the final outcome of the proceedings against the offender, and to report on measures adopted with a view to preventing a repetition of such violations;

(c) The States so reporting to consider using or taking into account the guidelines prepared by the Secretary-General;

11. Requests the Secretary-General:

(a) To send, without delay, a circular note to all States reminding them of the request contained in paragraph 10 above;

(b) To circulate to all States, upon receipt, the reports received by him pursuant to paragraph 10 above, unless the reporting State requests otherwise;

(c) To draw the attention, when appropriate, of the States directly concerned to the reporting procedures provided for in paragraph 10 above, when a serious violation has been reported pursuant to paragraph 10 (a) above;

(d) To address reminders to States where such violations have occurred if reports pursuant to paragraph 10 (a) above or follow-up reports pursuant to paragraph 10 (b) above have not been made within a reasonable period of time;

12. Also requests the Secretary-General to invite States, in the circular note referred to in para-
11. (a) above, to inform him of their views with respect to any measures needed or already taken to enhance the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations;

13. Further requests the Secretary-General to submit to the General Assembly at its sixty-first session a report containing:

(a) Information on the state of ratification of, and accessions to, the instruments referred to in paragraph 8 above;

(b) A summary of the reports received and views expressed pursuant to paragraphs 10 and 12 above;

14. Invites the Secretary-General to include in his report to the General Assembly any views he may wish to express on the matters referred to in paragraph 13 above;

15. Decides to include in the provisional agenda of its sixty-first session the item entitled “Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives”.

Treaties and agreements

Reservations to treaties

ILC, at its fifty-sixth session [A/59/10], considered the ninth report of Special Rapporteur Alain Pellet (France) relating to the object and definition of objections [A/CN.4/544], which complemented his eighth report [YUN 2003, p. 1345] on the formulation of objections to reservations and interpretative declarations. Following its consideration of the report, ILC decided to refer to the Drafting Committee draft guidelines 2.6.1 (definition of objections to reservations) and 2.6.2 (objections to the late formulation of widening of the scope of a reservation). It considered and provisionally adopted the following draft guidelines that had been referred to the Drafting Committee in 2003 (ibid.): 2.3.5 (widening of the scope of a reservation), 2.4.9 (modification of an interpretative declaration), 2.4.10 (limitation and widening of the scope of a conditional interpretative declaration), 2.5.12 (withdrawal of an interpretative declaration), and 2.5.13 (withdrawal of a conditional interpretative declaration). ILC also adopted the commentaries to those draft guidelines and reproduced in its report the text of the draft guidelines to treaties it had adopted, together with the commentaries thereto.

Treaties involving international organizations

The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations [YUN 1986, p. 1006], which had not yet entered into force, had 39 States parties as at 31 December 2004.

Registration and publication of treaties by the United Nations

During 2004, 1,388 international agreements were received and 1,125 subsequent actions were registered or filed and recorded by the Secretariat. In addition, 890 formalities concerning agreements for which the Secretary-General performed depositary functions were registered. Twelve issues of the *Monthly Statement of Treaties and International Agreements* were published.

In addition, the texts of international agreements registered or filed and recorded were published in the *UN Treaty Series* (UNTS) in 84 volumes in the original languages, with translations into English and French where necessary. The United Nations Treaty Collection on the Internet (UNTGC), which contained published UNTS volumes up to 2004, the *League of Nations Treaty Series*, the *Treaty Handbook*, the *Handbook of Final Clauses*, *Multilateral Treaties deposited with the Secretary-General*, the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, the *Focus Books*, information on training and a range of materials on treaty law and practice, received an average of 1.7 million hits per month in 2004.

Multilateral treaties

The *UN Treaty Series* and the regularly updated status of multilateral treaties deposited with the Secretary-General were available on the Internet at the UN Treaty Collection website (http://untreaty.un.org).

New multilateral treaties concluded under UN auspices

The following treaties, concluded under UN auspices, were deposited with the Secretary-General during 2004:


*Amendment to the Convention on Environmental Impact Assessment in a Transboundary Context*, adopted in Cavtat, Croatia, on 4 June 2004

*Amendments to Articles 25 and 26 of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, adopted in Geneva on 17 February 2004
Multilateral treaties deposited with the Secretary-General

At the end of 2004, the Secretary-General performed depositary functions for 512 multilateral treaties. During the year, 184 signatures were affixed to treaties for which he performed depositary functions and 1,487 instruments of ratification, accession, acceptance and approval were deposited.

The following multilateral treaties, among others, in respect of which the Secretary-General acted as depositary, came into force in 2004:

- **Agreement on the Privileges and Immunities of the International Criminal Court**, adopted in New York on 9 September 2002
- **Amendment to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects**, adopted in Geneva on 21 December 2001
- **Agreement on Succession Issues**, adopted in Vienna on 29 June 2001
- **Special Protocol concerning Statelessness**, adopted in The Hague, the Netherlands, on 12 April 1930

Information for 2004 regarding all multilateral treaties deposited with the Secretary-General was contained in Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2004, Vols. I & II [ST/LEG/SER.E/23], Sales No. E.05.V.3.